

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

**CRM-M No.48984 of 2022 (O&M)
Date of decision : 05.12.2022**

Gurinder Singh Kamboj

..... Petitioner

versus

State of Haryana & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Chander Shekhar Yadav, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

Present petition has been filed invoking Section 482 Cr.P.C. seeking quashing of FIR No.0264 dated 21.06.2022 registered for offences punishable under Sections 406 & 506 of the Indian Penal Code, at Police Station Gadpuri, Palwal, Haryana.

As per the allegations levelled in the FIR, it is alleged as under:-

“To, S.H.O Police Station Gadpuri, District Palwal, Haryana Subject to legal action being filed against Gurinder Singh, Proprietor M/S GSK Company Address House No. 143, 1st Floor Sector-48, Sohna Road, Gurugram and the official address of the firm is Post Lodhivali, Lodhivali Near Gao Devi Mandir, Khalapur, Raigarh, Maharashtra, 1 Floor, Kalpatru Court, Dr. C.G. Gidwai Road, Chambur East, Mumbai, Maharashtra 400074 Flat No. J 702, Ambience Caitriona, NH-8, Next to Ambience Mall, Ambience Island, Gurugram 122010, Haryana Mobile No. 96509243994 by Piering Machines, not paying its rent, fraud, treason in treason and applications threatening to kill. Sir, the complainant request the following: The Complainant company here is engaged in the business of manufacturing and renting out equipments useful in

construction works at its Registered Office at Dudhaura Link Road, District Palwal, Haryana. The Complainant company has been registered under the provision of the Companies Act. Mr. Himanshu Rathore, Assistant Manager has been authorized vide Board of Resolution dated 28.01.2021 to give the present application, as he is well acquainted with the context of the said complaint/sentence. 2. In the month of October 2019, the accused Gurinder Singh had contacted the Complainant company to hire a machine named Piling Ring which is used in Road Project and declared himself as the proprietor of the firm named M/S GSK Company and said he is a very big contractor and wants to buy three to four piling ring machines and said that first he will see the performances by renting the machine and then he will take the machines. The officers of the Complainant company who came to the words of the accused made them aware of the cost of renting of all piling ring machines. The accused took possession of the machines on the pretext that he will pay rent of Rs. 12 lakhs per month and when the officers of the Complainant company asked the agreed rent, the accused started to delay the same on pretext to another. Thereafter, when the officers of the complainant company demanded the machine back for not paying the rent amount, he started abusing them and forcibly sub-rented the said machinery to other company and charged the rent of Rs. 50 lakhs per month. Whenever the officers of the Complainant company tried to meet the accused, they were threatened and sent back from the gate. Sir, on 20.07.2021, when the officer of the Complainant company, Mr. Manoj ji, went to ask for money on behalf of the company, after sitting continuously for two days. When the officer met the accused on the third day, the accused threatened and said that I am running your machines from 2020 to till 2021, without paying one-rupee rent, do whatever you want to, neither I will give the machinery nor the amount. On 23.07.2021, several officers of the Complainant company, Mr. Manoj Aggarwal, Vishal and others all met and explained to the accused with the help of common friends, on which he agreed to pay the rent amount and wrote the condition in writing on 23.07.2021. RTGS of 10 lakhs in the name of the Complainant company, which the accused gave to the Complainant company from his YES BANK whose RTGS Number YESBR52021072382675967 and assured that he will pay the rent of the machinery in a few days, but that was also part of the accused plan. Till date, neither the rent has been paid nor have machines been returned. 5. On 23.07.2021 the accused had promised to the complainant company that he will pay the all rent amount by 15.08.2021. However no rent was paid till 15.08.2021, except Rs.

10,00,000/- which shows the pre planned conspiracy of the accused, the accused illegally took the possession of the machinery of the Complainant company and sub-rented the same at 50 Lakhs per month to other companies which in total amounts to 8 crores 50 thousand. The accused defrauded the complainant company and did not pay the due amount of rent which amounts to Rs. 8 Crore 16 Lakhs. Thereafter, when the accused did not paid the amount due, the complainant as per the terms and conditions took back their machinery on 15.08.2021 i.e 17 months after renting it. 6. Many parts of the machines of the complainant company such as tool box etc. are still in accused possession and are being used by the accused without paying their rent amount. Whenever, the officers of the Complainant company demand the due amount then the accused is threatening to kill the officers of the complainant company and threaten them by saying that recover it, if you can. The accused is threatening to kill the company's officer named Vishal and is saying that if you come to ask for money, I will kill you. Sir, therefore it is requested to you that the principal amount of the complainant company which is Rs. 8,16,00,000/- is rented machine which has been usurped by the accused, so strictest legal action should be taken against the accused and the life and property of the complainant company should be protected. The accused has committed a crime against the complainant company under a well-planned conspiracy. Kindly take appropriate action.”

Thus the gravamen of the complaint is with respect to the threats given by the accused and withholding of machine parts by the accused. Learned counsel for the petitioner has emphatically argued that in the present case the threats attributed to the accused-petitioner relate back to the incident dated 20.07.2021 and the FIR has been registered more than an year thereafter. Further, it has been argued that the complainant is guilty of concealment of facts and the falsity of the allegations levelled against the petitioner is evident from the repeated complaints filed by the complainant against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') in October, 2021 i.e. much prior to the date of filing of the present complaint and the same would

go on to show that there was not even a whisper qua the threats attributed to the petitioner in the present complaint. He further submits that apart from that there are many more documents, which have been placed on record in form of the communications that have originated from the complainant himself which would indicate that no allegation was raised against the petitioner even in those communications and the present complaint being improved and after thought cannot be sustained. He relies upon ***S.P. Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) by LRs and Ors. AIR 1994 SC 853*** to impress upon that the complainant being guilty of having concealed material facts in the earlier litigation is precluded from maintaining the present complaint and in the present FIR. His contention is that the complainant was under obligation to disclose qua threats and withholding of machine parts in the complaints filed earlier under Section 138 of the Act and likewise he was required to disclose fact with respect to filing of complaints under Section 138 of the Act in the present complaint. He further relies upon order dated 10.03.2014 passed by Delhi High Court in ***CM(M)1107/2013*** titled as ***Nisha Jain Vs. M/s Pacific Spirits (P) Ltd. & Anr.*** and ***Satish Khosla Vs. M/s Eli Lilly Ranbaxy Ltd. & ors. 1998(2) RCR (Criminal) 646.*** Reliance is further placed upon ***Mitesh Kumar J. Sha Vs. The State of Karnataka & ors.*** passed in Criminal Appeal No.1285 of 2021 (arising out of SLP(Crl.) No.9871 of 2019) decided on 26.10.2021 and ***Prof. R.K.Vijayasaraty & anr. Vs. Sudha Seetharam & anr.,*** passed in Criminal Appeal No.238 of 2019 (arising out of SPL (Crl.) No.1434 of 2018) decided on 15.02.2019 to contend that where the matter is purely of contractual breach, criminal proceedings will not lie as the same shall entail civil consequences.

I have heard learned counsel for the petitioner and have gone through records of the case.

Principles of law related to exercising inherent power under Section 482 Cr.P.C. of the Code are well settled. In ***State of Haryana & ors. Vs. Ch. Bhajan Lal & ors., 1992 AIR (Supreme Court) 604*** while issuing a word of caution to exercise power of quashing a criminal proceeding very sparingly and with circumspection and that too in the rarest of rare cases, Apex Court held that :-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases 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 guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 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. Where a criminal proceeding is manifestly attended with malafide 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.”

Thus, in view of the aforesaid settled proposition of law, the touchstone will be as to whether from bare reading of FIR, the offences punishable under Section 506 Part II and 406 IPC are made out or not. When the pleas raised by counsel for the petitioner are tested on the touchstone as laid down by the Apex Court in ***Ch. Bhajan Lal's case (supra)***, this Court finds that the plea raised by the learned counsel for the petitioner sans merit.

On a pointed query being raised to the learned counsel for the petitioner, he agrees that there was no occasion for the complainant to disclose the fact with respect to the threat and keeping the machine tools with him in the proceedings under Section 138 of the Act as the same would not constitute cause of action for maintaining those complaints.

Thus the reliance upon law laid down in ***S.P. Chengalvaraya Naidu's case (supra)*** and those followed by Delhi High Court in the case of ***Nisha Jain's case (supra)*** & ***Satish Khosla's case (supra)*** is concerned, same is misfounded.

Coming on to the second limb of argument raised by learned counsel for the petitioner from the bare reading of the FIR, it is evident that the allegations levelled against the petitioner are more than mere breach of agreement.

Keeping in view the aforesaid principles of law, this Court finds no ground to interfere in the present petition as the allegations levelled are not mere breach of promise but of inducing threats and withholding machine parts. The truthfulness thereof cannot be tested while exercising jurisdiction under Section 482 Cr.P.C. The same needs trial. Trite it is at this stage this Court is required to ascertain as to whether the allegations in the FIR do constitute cognizable offence or not when taken on face value and not to conduct mini trial. This Court is of the considered opinion that the case of the petitioner does not fall within the ambit of law laid down in ***Ch. Bhajan Lal's case (supra)*** warranting quashing of proceedings against the petitioner.

Consequently, the present petition is dismissed.

Nothing observed herein shall be construed to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

05.12.2022

Pooja sharma-I

Whether speaking/reasoned

Yes

Whether Reportable :

No