

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

220

CRM-5525-2020 in/&
CRM-M-47799-2019
Date of Decision :01.02.2022

Pardeep Kumar Dhingra

...Petitioner

Versus

State of Punjab and another

...Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Puneet Kansal, Advocate for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab
assisted by ASI Basant Singh.

Mr. K.D.S. Sidhu, Advocate for respondent No.2.

Harsimran Singh Sethi, J. (Oral)

CRM-5525-2020

As prayed for, application is allowed.

CRM-M-47799-2019

The present petition has been filed for quashing of FIR No.105 dated 12.06.2019 registered under Sections 406 & 420 of the IPC at Police Station City South, District Moga and all the subsequent proceedings arising therefrom on the ground that the dispute is civil in nature.

Learned counsel for the petitioner argues that even, from the

bare reading of the present FIR, it is clear that the dispute is with regard to the recovery of payments, which according to the complainant, he is entitled for, in respect of the work, which has been executed by the complainant in favour of the petitioner in the year 2015 as per the agreement executed between the complainant and the petitioner. Learned counsel for the petitioner submits that as per the complainant, allegedly a sum of Rs.42,38,500/- is due towards complainant in terms of the said agreement and the said amount is not being paid by the M/s Sahil Builders, of which the petitioner is a partner. Learned counsel for the petitioner submits that as the alleged claim of Rs.42,38,500/- is being made on the basis of an agreement in respect of the work purported to have been executed by the complainant for M/s Sahil Builders, ingredients of Sections 406 & 420 of the IPC are not fulfilled as the complainant has a remedy of filing civil suit for recovery of the said amount in case, the complainant is entitled for the same. Learned counsel for the petitioner submits that claim of the complainant in respect of Rs.42,38,500/- is vehemently denied by the petitioner and even otherwise as the dispute is totally civil in nature, learned counsel prays that the present FIR along with subsequent proceedings initiated, may kindly be quashed.

Learned State counsel concedes the factum of agreement between the complainant and M/s Sahil Builders, of which the petitioner is a partner for undertaking certain works and the fact that the claim of the complainant arises out of the said agreement in respect of the works purported to have been executed by the complainant for the petitioner.

Learned State counsel submits that offence of criminal breach of trust is

made out, keeping in view the facts and circumstances of this case.

Learned counsel appearing for the complainant submits that though, agreement between the parties is a conceded position and complainant is entitled for an amount of Rs.42,38,500/- as per the work executed under the said agreement as the complainant has laid down Optical Fibre Cable on behalf of M/s Sahil Builders but, despite the execution of the said work, payment is not being made to the complainant, which shows that the petitioner had an intention to defraud the complainant right from the beginning as payments due to the complainant are not being released by the petitioner. Learned counsel appearing for the complainant submits that not only charges have been framed but, even the witnesses have been examined and, therefore, prayer of the petitioner for quashing of FIR at this stage, may kindly be declined.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

From the facts, which have been narrated hereinbefore, it is clear that there was an agreement executed between the complainant and the petitioner for execution of certain works, which the complainant executed and the claim of Rs.42,38,500/- of the complainant arises out of the work executed under the said agreement. The said claim of the complainant in respect of Rs.42,38,500/- is not based upon entrustment of the said amount to the petitioner but entitlement of the same is being claimed on the basis of the execution of certain works, which was done in pursuance to the agreement between the parties. In the present FIR, Sections 406 and 420 of the IPC have been invoked on the basis of the allegations and this Court is

to examine as to whether, the present is a civil dispute or the provisions of the IPC, which have been invoked in the present FIR, are applicable.

Criminal breach of trust has been defined in Section 405 of the IPC. Section 405 of the IPC is as under:-

“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”.

A bare perusal of Section 405 of the IPC makes it clear that the first ingredient of Section 405 is that there shall be an entrustment of property so as to invoke the said provision. In the present case, nothing has been brought to the notice of this Court to show that a sum of Rs.42,38,500/- was ever entrusted by the complainant in any manner with the petitioner, rather, the said amount is being claimed for execution of certain works, in terms of the agreement entered into between the parties, therefore, the claim of the complainant arises out of the agreement, which shows that the present dispute is purely civil in nature. The complainant, rather than availing the remedy of initiating civil proceedings for recovery of said amount, has filed the present complaint with the police and even the Investigation Agency, without any application of mind that as to whether, keeping in view the facts and circumstances of the present case, the required ingredients so as to constitute a criminal offence are fulfilled or not, have not only recorded the FIR but, have even presented the challan.

Learned counsel for the complainant submits that Section 420 of the IPC has also been invoked as the petitioner, who is a partner of M/s

Sahil Builders cheated the complainant, which is clear from the fact that besides execution of work to their satisfaction, the due amount, for which, the complainant is entitled as per the agreement is not being released and, therefore, the action of the petitioner in not releasing the amount due to the complainant is an offence under Section 420 of the IPC.

In order to invoke the provisions of Section 420 of the IPC, the complaint filed by the complainant has to show intention to the effect that the petitioner-accused intended to cheat the complainant right from the beginning, which intention has been carry forward and the intention to cheat is visible from the subsequent act of the accused as well. In the present case, nothing has been mentioned in the complaint even to suggest that the petitioner intended to cheat the complainant at the time of execution of the agreement, as apparently, dispute arose between the petitioner and the complainant after the execution of the work as the claim of Rs.42,38,500/- was raised by the complainant after execution of the work.

Hon'ble Supreme Court of India in various pronouncement has held that the High Court has a jurisdiction to quash an FIR, where the dispute is essentially civil in nature but has been given cloak of a criminal offence and the ingredients required to constitute a criminal offence are not made out even from the bare reading of the complaint. While deciding **Criminal Appeal No.238 of 2019** on 15.02.2019 titled as **Prof. R.K. Vijayasarathy and another vs. Sudha Seetharam and another**, Hon'ble Supreme Court of India held as under:-

“23 The jurisdiction under [Section 482](#) of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a

civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court.

24 In the present case, the son of the appellants has instituted a civil suit for the recovery of money against the first respondent. The suit is pending. The first respondent has filed the complaint against the appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under [the Penal Code](#). An attempt has been made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first respondent against the appellants constitutes an abuse of process of court and is liable to be quashed.”

The same question again came up for consideration before the Hon'ble Supreme Court of India while deciding **Criminal Appeal No.1285 of 2021** on 26.10.2021 titled as **Mitesh Kumar J. Sha vs. State of Karnataka and others** and it has been held that unless and until the fraudulent or dishonest intention is shown right at the beginning of transaction, mere breach of contract cannot give rise to criminal prosecution so as to give criminal colour to a civil dispute and such an exercise when brought to the notice of the Court must be discouraged in its entirety so that there is no abuse of process of law. Relevant paragraph of the judgment is as under:-

“47. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.”

Further, a Coordinate Bench of this Court in **CRM-M-34789 of**

2020 titled as **Manjit Kaur vs. State of Punjab** decided on 30.10.2020 after relying upon the judgment of Hon'ble Supreme Court of India in **Hridaya Ranjan Pd. Verma and others vs. State of Bihar and another** 2000(2) RCR (Criminal) 484 has held that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is at the time when the offence is said to have been committed. Relevant paragraphs of the judgment are as under:-

7. The Supreme Court in **Hridaya Ranjan Pd. Verma and others v. State of Bihar and another**, 2000(2) R.C.R. (Criminal) 484 held as under:

“16. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning that is, when he made the promise cannot be presumed.”

X X X X X X

10. Before parting, it would be necessary to take note of the prevailing tendency to paint civil disputes as criminal acts. The endeavour is to somehow wriggle the other party in criminal proceedings for applying pressure to settle the issue. The alternative route adopted is considered to be a short cut to the civil litigation. Such tendencies have been deprecated by the Apex Court. The distinction between the civil dispute and criminal proceeding is no longer *res integra*, various judgments of the Apex Court have dealt with the issue. It is being noticed that in number of cases involving pure and simple money recovery, specific performance issues or such like matters, FIRs are being registered by the police authorities. In order

to avoid harassment in the matters involving civil disputes, it is need of the hour that the police department at the appropriate level, looks into the process of registering FIR, especially in matters having tone of civil dispute.”

The facts and circumstances of this case are squarely covered by the ratio of the decisions, which have been reproduced hereinbefore. The claim of the complainant is for the recovery of an amount of Rs.42,38,500/-, which the complainant is claiming for execution of work in pursuance to the agreement between the parties and not on the basis of entrustment of the said amount with the petitioner. Nothing in the complaint suggests that agreement entered into between the parties was based on fraud in any manner. That being so, provisions of IPC have been invoked in the present case without any application of mind so as to ascertain whether ingredients required for invoking those sections of the IPC are made out or not, keeping in view the allegations alleged in the complaint. The claim of the complainant for the recovery of sum of Rs.42,38,500/- is a civil dispute between the parties and rather than invoking the civil jurisdiction of the competent Court of law, a shortcut method has been adopted by the complainant by initiating criminal proceedings against the petitioner.

That being so, invoking of criminal proceedings by the complainant can be termed as a total abuse of process of law in the facts and circumstances of the present case and the same cannot be allowed to proceed. Hence, FIR No.105 dated 12.06.2019 registered under Sections 406 & 420 of the IPC at Police Station City South, District Moga and all the subsequent proceedings arising therefrom are quashed.

It is made clear that this Court is expressing no opinion with regard to the entitlement of the complainant for the recovery of the amount

of Rs.42,38,500/- and the complainant will be at liberty to avail an appropriate remedy for the same and in case any civil proceedings are initiated by the complainant, the same will be decided on the basis of the evidence, which will come in those proceedings.

February 01, 2022
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No