

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.3891 of 2021 (O&M)
DATE OF DECISION: 25th SEPTEMBER, 2023

Harminder Singh and another

.... Petitioners

Versus

State of Punjab and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. J.S. Gill, Advocate,
for the petitioners.

Mr. Jaspal Singh Guru, AAG, Punjab.

None for respondent No.2.

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RAJBIR SEHRAWAT, J. (Oral)

1. The present petition has been filed by the petitioners under Section 482 Cr.P.C. for quashing of FIR No.01 dated 01.01.2019 under Sections 420 and 120-B IPC registered at Police Station Mode Town, Ludhiana, District Ludhiana and all consequential proceedings arising thereto, with certain other prayers made in the present petition.

2. The brief facts, as involved in the present petition, are that the complainant Prem Singh Sokhi got lodged a complaint with the police; stating therein that earlier he was in the business of running school. One P.P. Singh, Chartered Accountant was doing his work of accounting. In the year 2016, the above said complainant intended to shift from the business of running school to Hydro Electric Power

Generation. Therefore, he was in search of some viable project with reasonable profit. The said P.P. Singh; being the Chartered Accountant of the complainant; was aware of the fact that the complainant was having the money and he was in search of a new business. The petitioners/accused Harminder Singh Gadiyal and Subhash Bhatt were having a partnership; claiming to deal in sale, purchase and consultancy services regarding hydro-electric power project; and were running the said business in the name and style of M/s Hygiene Hydro Electric Power Corporation with business office at 4052/C, Street No.2, Opposite ITI, Gill Road, Ludhiana. Mr. P.P. Singh, was the cousin of accused Harminder Singh Gadiyal. With the intention of cheating the complainant, the above said accused Subhash Bhatt and Harminder Singh Gadiyal in collusion with the above said P.P. Singh hatched a conspiracy. Under the said conspiracy, P.P. Singh introduced the complainant with the above said accused with the assurance that they were doing the consultancy service of sale, purchase, installation and maintenance of Hydel Power Project and that they could get him a very profitable Hydel Power Project in Himachal Pradesh. It was further presented before the complainant that the accused will get their commission from the complainant only after handing over the project and making available all the relevant documents of the power project. Thereupon; the complainant had expressed his intention to the accused to have a reasonably large and profitable hydro-electric project. However, the accused kept on befooling the complainant by showing small size projects of 2 Mega Watt and 4 Mega Watt with the assurance that the complainant would get Rs.6 to 7 Lakhs per month per Mega Watt as the profit. However, the complainant expressed his

disinclination in the small projects of 2 MW and 4 MW. Accordingly, talks were initiated for a 12 MW power project and the complainant told the accused that he would proceed further only after seeing the relevant documents and inspecting the site. Then the accused pressurized the complainant to deposit a sum of Rs.21 Lakhs with them and ensured that the same will remain as security with the agent and that in case of non-maturity of the deal, the amount will be returned to the complainant. On the assurance made by them, the complainant issued a cheque of Rs.21 Lakhs dated 15.03.2017, drawn upon HDFC Bank, Ludhiana. At the time of handing over the cheque, it was specifically instructed to the petitioners that the money was being paid to them not for any other purposes but the said amount will remain with them only as security till the bargain matures and after the complainant had seen the project. Thereafter, the complainant got busy in connection with marriage of his one son and the treatment of his other son, who had met with an accident in the meantime; and thus was unable to walk. Taking advantage of these personal problems of the complainant, the accused encashed the said cheque and did not hold any meeting with any owners of any project of the size which the complainant had told to the petitioners. As a result, no bargain was got matured by the accused, as such. Not only that, the petitioners/accused were was not having any documents of authority from any owner/seller or any power project. Even qua the small power projects, which were earlier brought to the notice of the complainant, the petitioners were not having any original documents. Rather, after showing the fake documents to the complainant, the same were got returned by them. When it became clear to the complainant that the

petitioners were cheating the complainant, then he demanded his cheque/money back. However, the petitioners refused to return the same. Hence, it was requested that criminal case be registered against the petitioners and the money of the complainant be got returned to him. On these allegations, FIR No.01 dated 01.01.2019 under Sections 420 and 120-B IPC was registered. However, before registration of the above said FIR, an enquiry was conducted by a senior police officer, which was further approved by still senior police officer. After getting legal opinion from the District Attorney (Legal), Ludhiana, the FIR was got registered. Thereafter, even the report under Section 173 Cr.P.C. has been filed against the accused/petitioners. It is challenging the said FIR and the final report filed by the police under Section 173 Cr.P.C., that the present petition has been filed.

3. Arguing the case, learned counsel for the petitioners has submitted that no offences under Sections 420 and 120-B IPC are disclosed against the petitioners even if allegations are taken to be correct. In fact, the entire case is created against the petitioners with mala-fide intention to wriggle out of the civil liabilities standing against the complainant. The petitioners are the consultancy service providers for hydro power projects. In that capacity only, the complainant had contacted the petitioners, who being Engineers in the field had sufficient expertise. The complainant had shown his intention; and had, accordingly, authorized the petitioners to look for the said power project. In the process, the petitioners had shown two power projects, one for 2 MW capacity and the other for 4 MW capacity. The said power projects were duly inspected by the complainant. After that, a payment schedule

was agreed. The complainant had duly signed the said payment schedule. Accordingly, an amount of Rs. 21 Lakhs was released in favour of the petitioners as consultancy charges. Out of that amount, an amount of Rs.10,00,121/- was further paid by the petitioners to another service provider i.e. M/s Bhalie Mata Hydro Electric Pvt. Ltd. However, later on, the complainant changed his mind and refused to purchase the said power projects. Since, the petitioners had charged only their commission and a part of the price; which has already been paid to another person, therefore, neither the petitioners were required to return the amount nor the petitioners were having the entire money to return the same to the complainant. Instead, it was the complainant who was in arrears and thus; was to pay to the petitioners Rs.50,000/- more. Therefore, to get that money from the complainant, the petitioners had even served a legal notice upon the complainant. Since, the complainant had not paid the amount, therefore, the petitioners have even filed a suit for recovery of their amount. Accordingly, it is submitted that the entire issue involved in the case is purely of civil nature. The civil dispute has been given a colour of a criminal offence by the complainant with mala-fide intention by misusing process of the law. Therefore, the FIR, as well as, the report filed by the police under Section 173 Cr.P.C. deserves to be quashed. Learned counsel for the petitioners has relied upon the judgments rendered by Hon'ble the Supreme Court in the cases of ***Hridaya Ranjan Pd. Verma and others Versus State of Bihar and another, 2000 (2) R.C.R. (Criminal) 484, Dalip Kaur and others Versus Jagnar Singh and another, 2009 (4) R.C.R. (Criminal) 540*** and ***M.N.G. Bharateesh Reddy Versus Ramesh Ranganathan and another, 2022 (4) R.C.R.***

(Criminal) 586, to buttress his arguments that the FIR should be quashed in case the matter involves civil dispute or if the criminal law has been invoked for mala-fide reasons. Hence, it is submitted that the FIR and the consequent proceedings against the petitioners be quashed.

4. On the other hand, learned State counsel has submitted that the police had received a complaint from the complainant that he has been cheated of Rs.21 Lakhs by the petitioners. The said amount was obtained by the petitioners under a conspiracy in collusion with one Mr. P.P. Singh, who was earlier the Chartered Account of the complainant. The said amount of Rs.21 Lakhs was paid to the petitioners through cheque as a security in case they were able to mature a project deal in favour of the complainant. However, since no project deal was matured, therefore, the petitioners were under liability to return the said amount. However, they have misappropriated the above said amount of the complainant. On this complaint, the police conducted the preliminary enquiry before arriving at a decision whether the FIR should be registered in the matter or it should be left out; being purely a civil dispute. During enquiry, it was found that though the petitioners claim to have the partnership concern in the business of consultancy services, however, they failed to produce any agreement regarding engaging their services for any power project of 2 MW or 4 MW capacities. Not only that, although they claim to be a partnership firm, however, no registration number of that firm was provided by them. Since, there was nothing shown by the petitioners to rebut the assertions made by the complainant, therefore, the Enquiry Officer had arrived at a conclusion that the FIR deserves to be registered in the matter and the proper

investigation deserves to be carried out. The opinion of the Enquiry Officer was approved by the Superior Officer, as well. Thereafter, on getting a legal opinion from the District Attorney, the FIR was registered.

5. It is further submitted by State counsel that during the investigation, the police have found sufficient material to substantiate the crime committed by the petitioners. There are even independent witnesses to substantiate the claim of the complainant. Accordingly, finding the *prima facie* offences under Sections 420 and 120-B IPC, the police have filed challan against the petitioners. Learned State counsel has submitted that it is totally wrong to assert on the part of the petitioners that the matter involves a civil dispute. As per the assertions and the evidence collected by the police, the intention of the petitioners, right from the beginning, was to cheat the complainant. Therefore, they had started showing him the power projects of 2 MW or 4 MW, which was never asked by the complainant. Even regarding those projects, no original documents were provided by the petitioners. Moreover, the petitioners were required to obtain all the permissions and the clearances/licences for the complainant for running the business of hydro power projects. However, no such permission/licence was ever arranged by the petitioners. They have made mis-representation to the complainant and made him to part with an amount of Rs.21 Lakhs. The said amount of Rs.21 Lakhs has been embezzled by the petitioners in the name of consultancy services, which were never even provided by them. Learned State counsel has also submitted that whatever pleas the petitioners are raising in the present petition; are based on highly disputed facts. Therefore, the only course of the action available to the petitioners would

be to take all these aspects as defence during the trial and to substantiate the facts which they are claiming in their favour. Otherwise, there is nothing even with the petitioners, in writing, to substantiate what they have claimed their case to be. Hence, the police have rightly registered the FIR, investigated the matter, and have rightly filed the final report under Section 173 Cr.P.C. against the petitioners for seeking their prosecution under Sections 420 and 120-B IPC. However, since one of the co-accused, namely, Mr. P.P. Singh has already expired, therefore, as of now, there are only the petitioners who are facing the said proceedings. Since, the petitioners have cheated the complainant; of a huge amount, therefore, they deserve to be punished very severally. The FIR and the consequent proceedings are not liable to be quashed, by any means. Hence, it is submitted that the present petition be dismissed.

6. Having heard learned counsel for the parties and having perused the paper book of the case, this Court does not find any substance in the arguments raised by learned counsel for the petitioners. The first fact which is totally uncontroverted is that the petitioners have obtained an amount of Rs.21 Lakhs from the complainant through cheque. The said cheque has been encashed in the account of the petitioners. Therefore, the transfer of money pursuant to the representation made by the petitioners to the complainant is not even disputed. There is nothing on record to show that the complainant had paid this money to the petitioners as consultancy charges, rather his assertion is that it was given as a security.

7. The real dispute is that the complainant has alleged that he had instructed the petitioners to find out a hydel project of reasonable

size of about 12 MW capacity. But he was shown only small projects of 2 MW or 4 MW. After seeing those projects, as per the complaint, he had shown his disapproval for the said projects and had instructed the petitioners to arrange a 12 MW power project. On the other hand, the petitioners are claiming that they had shown the complainant the projects of 2 MW and 4 MW capacities. However, there is no written agreement in support of the assertion of the petitioners that they were engaged by the complainant to find the hydel power projects of any capacity, may be as small as 2 MW or 4 MW. Therefore, the assertion of the petitioners in that regard is totally unsubstantiated, as such. Hence, there is nothing on record of the case to controvert the assertion of the complainant that he had asked the petitioners to look for a hydel power project of capacity of 12 MW. In any case, the factum whether the petitioners were asked to look for hydel power projects of any capacity, may be 2 MW and 4 MW or they were asked by the complainant to look for a power project of higher capacity of not less than 12 MW is a disputed question of fact. This Court cannot go into the disputed question of facts so as to scuttle the appropriate proceedings before the trial Court, wherein the petitioners would be granted due opportunity to cross-examine the complainant and the prosecution witnesses to extract truth from the complainant; and also shall be granted an opportunity to lead their own evidence to substantiate their own version. Therefore, at this stage, neither it is permissible nor it is appropriate to delve into the disputed question of facts for the purpose of exercising powers under Section 482 Cr.P.C.

8. To lend some credence to the version claimed by the petitioners, they have placed on file of the case some documents. The

documents Annexures P-3 and P-4, which relate to the 2 MW and 4 MW power projects; show only the fact that the petitioners might have allegedly, made a proposal to the complainant. However, they have not produced anything on record to show that the complainant had ever accepted those proposals. Therefore, at this stage, it cannot be ruled out that these documents are self-created documents of the petitioners; intended to create their defence. Still further, Annexures P-6 and P-7 are the documents claiming to be the payment schedule agreed between the parties. However, these documents do not make out any head and tail of anything. These appear to be just some writings prepared by the petitioners. Although, these two writings claimed that the complainant had put his signatures on these writings, however, the complainant has nowhere asserted or conceded that he had put his signatures on these alleged payment schedules. The veracity of these documents becomes questionable by another document, Annexure P-8, which though claimed to be relating to some time frame detail, however, the same is not even claimed by the petitioners to have been signed by the complainant. Therefore, even the signatures on the documents Annexures P-6 and P-7, the alleged payment schedule, would be a moot point which can be determined only by the trial Court during the trial proceedings.

9. Another aspect which dissuades this Court from venturing into the factual aspects of the matter is that; although the petitioners claim to run the consultancy services, indulging in advising, selling, constructing and commissioning of the hydro-electric power projects, however, in the present case, they have not even insisted upon any written contract regarding the consultancy service or regarding providing

any assistance to the complainant in arranging for him a power project. Rather, they have admitted that there had been no such agreement in writing between the parties. Not only that, although the petitioners claim that they had prepared proposals for 2 MW and 4 MW power projects and the complainant had agreed to that, however, the above said proposals do not show that they were ever sent to the complainant. They are not even addressed to the complainant, as such. Not only that, during the enquiry, the petitioners have admitted that they do not have any receipt of the said proposals having been received by the complainant. Their sole reliance is upon the factum of having received the amount of Rs.21 Lakhs as per the payment schedule. However, when, where, and how that payment schedule was agreed by the complainant is not clear from any document. Rather, the petitioners have admitted during the enquiry that they did not have any agreement for obtaining payment from the complainant-Prem Singh Sokhi, as such. Therefore, everything asserted on the part of the petitioners' hinges upon some alleged oral agreement between the parties, a plea which cannot even be entertained in a petition under Section 482 Cr.P.C. meant for quashing of the FIR, as such.

10. Although, learned counsel for the petitioners has submitted that the matter involved in the case is purely a civil dispute and the criminal proceedings are nothing but mala-fide misuse of the process of the law, however, even this argument of learned counsel for the petitioners is found to be bereft of any merits. There is no gain saying that in every offence relating to property or money, there are some trappings of civil dispute. Therefore, merely because some trappings of

civil aspect are involved in the FIR, that cannot be made a ground for quashing of the FIR *per se*. It is the assertion of the complainant, which is to be considered at this stage. If the assertions of the complainant disclosed a cognizable offence, then the FIR cannot be quashed only by taking recourse to the plea that the matter involves some aspects of the civil disputes. In the present case, the police have even filed the challan against the petitioners. Therefore, at this stage, it cannot be said, by any means, that there is no *prima facie* case against the petitioners. Beside the fact that the petitioners are hinging upon only their unsubstantiated assertions based on some oral understanding between the parties, it also deserves to be noticed that during the enquiry, a specific question was put up to them by the Enquiry Officer, as to whether they could present any sanction from Himachal Pradesh Government for selling any electricity projects by any person. As an answer to this, the petitioners are stated to have told to the Enquiry Officer that there was no such sanction available with them and that they work only like facilitators and only make the people understand about the project and help them in setting up such projects. Further question was put up by the Enquiry Officer that if the petitioners did not have any sanction from any government, then how they received Rs.21 Lakhs from the complainant. As an answer to this, the petitioners have asserted that they had only explained the works of 2 MW and 4 MW projects for making electricity from water and presented proposal to the complainant. Although, any material which comes up during the enquiry does not have much relevance as such, however, since the petitioners themselves have relied upon this enquiry and they have placed on record the same, therefore, the same can be read, at this stage,

at least, for the limited purpose of assessing whether they can claim that they did not have any intention to cheat right from the beginning. The answer given by the petitioners to the above said questions of the Enquiry Officer shows that their response has been different than what they had presented before the complainant. Not only that, they are not registered with any government agency for conduct of the business as such, nor as the partnership firm, still they had promised all the licenses, permissions and the requirements from the governments to be fulfilled by them and on such representation made the complainant to part with an amount of Rs.21 Lakhs. Therefore, at this stage, it cannot be ruled out that their intention right from the beginning was geared to cheat the complainant. In fact, the entire material placed on the file by the petitioners themselves shows their stand to be quite sketchy and giving a clear-cut impression that their attempt was anything but a business in accordance with law. Since, there are criminal overtones, *prima facie* reflected in the matter, therefore, mere fact that the petitioners themselves have filed a suit for recovery of Rs.50,000/- more; is of no assistance to the petitioners. It can be, again, an attempt in self-service; made by the petitioners. In view of the above facts and circumstances, none of the aforesaid judgments cited by learned counsel for the petitioners is of any help to the case of the petitioners. The facts of the present case are clearly distinguishable from the facts of the cases relied upon by learned counsel for the petitioners. Therefore, although there cannot be any dispute regarding the proposition of law pronounced in those judgments, however, the same are not applicable to the case of the petitioners in *modicum*.

11. In view of the above, finding no merit in the present petition, the same is dismissed.
12. However, it is clarified that any observations made herein above shall not be taken by the trial Court as any expression on the merits of the case for the purpose of the trial.
13. The pending miscellaneous applications, if any, are also disposed of; as such.

25th SEPTEMBER, 2023
'sandeep'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>