

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

CRM-M-5450-2022
Decided on : 16.01.2023

Vellanyan Subbiah

..... Petitioner

Versus

State of Haryana & another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ashish Aggarwal, Sr. Advocate with
Ms. Aashna Aggarwal, Advocate and
Mr. Vishal Pundir, Advocate
for the petitioner.

Mr. Rahul Mohan, DAG, Haryana.

Mr. Jagdeep Singh Rana, Advocate
for respondent No.2.

Manjari Nehru Kaul, J.

The instant petition has been filed under Section 482 Cr.PC for quashing of FIR No.683 dated 18.11.2021 under Sections 34, 392 IPC and Section 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station City Hisar, District Hisar and all the consequential proceedings arising out of the same.

Learned senior counsel for the petitioner *inter alia* contends that the petitioner is the Chairman of M/s Cholanmandalam Investment and Finance Co. Ltd. (hereinafter referred to as Company), which provides loans for purchase of vehicles on hypothecation basis. The complainant M/s G.D.Goenka Global School, Hisar (hereinafter referred to as School) entered into an agreement with the Company on 28.02.2017 for purchase of

vehicle Traveller-26 registration No.HR-39D-3164 and availed the loan facility of an amount of Rs.14,36,000/-, which was repayable with interest in 47 installments. Since the School defaulted in the payment of installments and the cheques issued by it were dishonoured, the Company filed a petition under Section 9 of the Arbitration and Conciliation Act before the Court of Addl. District Judge, Hisar. The Court appointed a receiver to take peaceful possession of the vehicle in question. The borrower paid the defaulted amount and assured that henceforth regular payment of loan would be made to the Company. Hence, Company released the vehicle in question and also withdrew the complaint filed under Section 138 of the Negotiable Instruments Act. However, yet again the School defaulted by not making payment of the due installments, as a result of which, a letter was written on 19.08.2019 (Annexure P-2) to the School by the Company for taking possession of the vehicle in question after taking recourse to appropriate proceedings.

In response to the said letter, the School requested the Company for reassessing/transferring the loan amount in favour of M/s Kalpana Chawla Educational Trust, which would take over the loan liability of the School by way of transfer of loan amount. Resultantly, the loan account was transferred and reassigned to M/s Kalpana Chawla Educational Trust, Hisar. However, after repeated reminders, the authorized person of M/s Kalpana Chawla Educational Trust, Hisar issued the cheques qua the loan account, which on presentation were dishonoured. Resultantly, complaint under Section 138 of the Negotiable Instruments Act was filed and which was still pending before the Court at Hisar. On 13.02.2021,

Arbitrator passed award (Annexure P-4) in favour of the Company and permitted the Company to take possession of the vehicle in question and also sell the same. The Company after duly intimating the police took possession of the vehicle from the School through M/s Bharat Repo Agency with whom the Company had an agreement.

Learned Senior counsel while drawing the attention of this Court to the FIR in question submits that totally false and fabricated allegations have been levelled against the petitioner that on 17.11.2021 when the driver and a lady conductor were going to park the vehicle in question i.e. bus, bearing registration No.HR-39D-3164, two boys came to the spot and forcibly snatched the keys from them and also took away the bus. Allegedly, the two boys indulged in casteist utterances against the lady conductor. Learned counsel further submits that except for the fact that the petitioner was admittedly, the chairman of the Company, there was no role attributed to the petitioner much less of the two boys having been sent by him or that he was present at the spot when the keys of the bus were allegedly snatched and the two boys had indulged in abusive and casteist utterances. Learned counsel still further submits that the petitioner, who is based in Chennai, on the date of alleged occurrence was not even in Hisar and thus, he had no connection whatsoever with the incident in question. In support of his submissions, learned Senior counsel has also placed reliance upon the judgment of Hon'ble Supreme Court in ***M/s Magma Fincorp Ltd. vs Rajesh Kumar Tiwari , 2020(10) SCC 399*** wherein Hon'ble Supreme Court held in unequivocal terms that if the possession of a vehicle is taken by the financier, it cannot be said a case of theft.

A prayer, therefore, has been made for quashing of the FIR by urging that on the face of it, the allegations do not disclose the commission of any offences by the petitioner much less to attract the mischief of Section 392/34 IPC.

Learned State counsel assisted by counsel for the complainant-respondent No.2 has opposed the submissions made by counsel opposite by urging that the matter is still under investigation and the role of petitioner would become more clear once he joins the investigation. Learned State counsel submits that no doubt, the petitioner was not present at the place of occurrence or even in the vicinity of Hisar when the occurrence in question took place but being the Chairman of the Company, he was responsible for the affairs of the Company and thus, vicariously liable for the offences committed by its employees.

Heard learned counsel and perused the relevant material available on record.

The Hon'ble Supreme Court in ***State of Haryana vs. Ch. Bhajan Lal, AIR 1992 SC 604*** while dealing with the inherent powers of this Court under Section 482 Cr.PC has carved out certain exceptions to the general rule that criminal proceedings/FIR should not be quashed in a routine manner. It would be relevant to reproduce the exceptions carved out to the general rules by the Supreme Court, which reads as under:

“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 channelized 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 42 PART E*

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.”*

Before proceeding further, it would be relevant to reproduce the relevant contents of the FIR in question, which is as under:

*“To The Incharge, Police Post Sector 14, Hisar-1.
Subject:- Regarding forcibly snatching the bus*

of G.D.Goenka Global School, Hisar and abusing the lady conductor.

Sir, it is submitted that on 17.11.2021, the driver and lady conductor told the School Manager that they were going for parking the School Bus bearing No.HR-39D-3164 (Bus Number 12) after dropping the kids in Sector 14, then two boys came and forcibly snatched the key from the driver and took the bus. When the lady conductor said who are you and you cannot take the bus or if you have any order, then please show me, they did not give any answer and used the abusive words to the lady conductor like (Chamari Kahi ki, Dhed Tujhe Bhi Dekh lenge) and also abused her by the caste. Sir, Cholamandalam had picked up our bus in September also, about which we complained to RBI, ED, then we got a call of Suvender Ji of their Head Office whose Mobile Number is 7305064138 and he told that the overdue charges imposed upon us would be exempted and our bus was sent to our School. They said that they apologized for the mistake made by our local team and they would change their team. They further asked as to withdraw the complaint made to the Police by us. At that time, our account was not even in NPA. They have committed great injustice with us and their senior officers also said that such mistake will not happen again in future. Now again, they have repeated the same mistake, while now we are paying installment every month. At the time of snatching the bus from the driver and the lady conductor, no one even signed on any paper and took the bus away and the lady conductor was abused by her caste. According to the order of the Hon'ble Supreme Court, the Finance Company cannot

lift the bus in Covid time. The legal action may kindly be taken under IPC and SC/ST Act against the Director of the Company Mr. Vellanyan Subbiah, Chairman, Non-Executive Director and Sanjay Dahiya Haryana Head and Sajjan Kumar Hisar Head (Mobile No.991115450) and other two persons.”

In the case in hand, a perusal of the allegations levelled in the FIR in question, which has been reproduced hereinabove, leaves no manner of doubt and makes it patently clear that no specific allegations direct or indirect have been levelled against the petitioner. The allegations levelled are only against those two boys, who allegedly snatched the keys from the bus driver and thereafter took away the vehicle in question. A perusal of the contents of the FIR also does not reveal that there is any attribution by way of any whisper that the offence in question had been committed at the behest of the petitioner or in connivance with him. Admittedly and not disputed by the learned State counsel as well as counsel for the complainant, the petitioner was not even shown to be present at the time of occurrence in question.

In ***M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others, 2021 AIR SC 1218***, Hon'ble Supreme Court has held that when a prayer is made for quashing the FIR, the Court has to only restrict itself to whether or not the allegations in the FIR disclose the commission of cognizable offence.

Hon'ble Supreme Court in ***Ramesh Chandra Gupta vs. State of U.P. And others, 2023(1) RCR (Crl.) 498*** has also reiterated that criminal

proceedings can be quashed when the complaint does not disclose any act or the participation of an accused in the crime.

In the case in hand as well, the FIR which was registered at the instance of respondent No.2 as already observed hereinabove does not disclose the participation, active or passive, of the petitioner, in the crime in question. Apparently, the petitioner has been implicated in the case in hand on account of the fact that he is the Chairman of the Company, which had granted the loan for the vehicle in question.

As a sequel to the above, the instant petition is allowed and the aforesaid FIR along with all consequential proceedings arising out of it, are quashed qua the petitioner. However, it is made clear that anything observed hereinabove shall have no bearing on the case qua other accused.

(MANJARI NEHRU KAUL)
JUDGE

16.02.2020
sonia

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