IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-7065-2022
Reserved on: 09.10.2023
Pronounced on: 13.10.2023

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Ashwani Kumar Goel and another

. . . . Petitioners

Vs.

State of Haryana and another

. . . . Respondents

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Dr. Anmol Rattan Sidhu, Sr. Advocate, with
Ms. Sandhya Gaur, Advocate, for the petitioners.

Mr. Vipul Sherwal, AAG, Haryana.

Mr. Vijay Kumar Jindal, Sr. Advocate, with
Mr. Vijayveer Singh, Advocate, for respondent No.2.

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DEEPAK GUPTA, J.

By way of this petition filed under Section 438 CrPC, petitioners pray for grant of anticipatory bail in case FIR No.466 dated 03.11.2021 registered at Police Station Baldev Nagar, District Ambala, under Sections 406/420/506 IPC.

2. FIR is based on a complaint dated 02.11.2021 made by Shri Pushkar Raj Gulati, proprietor of the firm M/s Gulati Engineers, engaged in the business of trading of mixers and electrical goods. Said complaint was directed against the petitioners, the partners of M/s Electro Max Home Appliances, which is engaged in the business of manufacturing all kinds of mouldings and electrical appliances. It was alleged that in 2018, the complainant-firm had ordered juicers, mixers, grinders etc. from the firm of the accused and had paid total amount of ₹38,02,000/- during 03.10.2018 to

20.12.2018. Despite receipt of the amount, neither the goods were delivered to the complainant-firm nor was the amount returned. It was further alleged that on 18.10.2021, when the complainant and his son met the petitioners-accused and asked for their money, they were abused and threatened.

3. (i) It is contended by ld. counsel for the petitioners that though the occurrence pertains to the transactions of the period October 2018 to December 2018, but the FIR has been lodged on the basis of complaint dated 02.11.2021 i.e., almost after three years. It is further contended that earlier, a complaint was made on 30.7.2021 addressed to the Home Minister, Haryana on the similar allegation of criminal breach of trust, cheating and criminal intimidation. However, later on, complainant made representation to DSP, Ambala to keep in abeyance the inquiry of the said complaint till 10.10.2021, as parties were trying to reach at a compromise. Copy of the complaint and representation are Annexure P3 and P4, respectively.

(ii) Ld. counsel further contends that a civil dispute has been given the colour of criminal offence. As per the information received by the petitioners through RTI, it transpired that DSP vide its report dated 21.09.2021, submitted to the senior officers, concluded that matter being of civil nature pertaining to business transaction, the complaint deserved to be consigned. Still further, it is contended that present FIR is a counter-blast to the Civil Suit for mandatory injunction as filed by the petitioners on 28.10.2021, which is pending for consideration before the trial Court at Ambala. Copy of the plaint is Annexure P7.

(iii) Apart from above, it is contended that out of ₹38,02,000/- credited to the account of the petitioners, amount of ₹21,78,326/- was towards the payment of outstanding dues for the goods earlier supplied to the complainant firm, whereas the remaining amount of ₹16,23,674/- was the advance payment for purchase of modified mould dye of juicer mixer grinder out of the total payments of ₹30 lakh. Representation was also made by the petitioners to the Inspector General of Police, Haryana, disclosing all the transactions between the parties.

(iv) Ld. counsel further submits that no penal offence is made out and case is purely of civil nature. Still, as in compliance of the order of this Court, petitioners have already joined the investigation and therefore, the interim anticipatory bail earlier granted to them be made absolute.

4. Opposing the bail petition, ld. State counsel along with ld. senior counsel for the complainant submits that receipt of the amount of ₹38,02,000/- by the petitioners is admitted. Against that amount of ₹38,02,000/-, no goods were delivered to the complainant and that a false story has been concocted by the petitioners regarding the outstanding dues of earlier deliveries. Ld. State counsel also submits that though petitioners have joined the investigation but they are not cooperating in the same qua the recovery of the cheated amount. Prayer for rejecting the petition is made.

5. I have considered submissions of both the sides and have appraised the record.

6. Even if all the allegations as contained in the FIR are taken at its face value, *prima facie,* the entire dispute appears to be arising from a

business transaction. Payment of ₹38,02,000/- was made by the complainant-firm during October 2018 to December 2018; whereas, complaint in question, on which basis FIR has been registered, was made on 02.11.2021 i.e. almost after three years. Similar complaint had earlier been made but complainant himself made the representation to stall the enquiry as parties wanted to go for compromise. As per the inquiry report submitted by the DSP, Ambala, matter was purely of civil nature. Besides, civil suit for mandatory injunction was filed by the petitioners prior to the lodging of the FIR. As per the status report filed by the respondent, petitioners have already joined the investigation in compliance of the order dated 21.02.2022 passed by this Court.

7. Having regard to the all the above facts and circumstances, but without commenting anything further on the merits of the case, order dated 21.02.2022, whereby petitioners were granted interim anticipatory bail, is hereby made absolute. However, it is made clear that the petitioners shall abide by the conditions as envisaged under Section 438(2) CrPC and they shall continue to join investigation, if and so required by the investigating officer.

Disposed of.

13.10.2023
Vivek

(DEEPAK GUPTA)
JUDGE

1. Whether speaking/reasoned? ***Yes****/No*
2. Whether reportable? *Yes/No*