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

Sr. No.236 CRM-M-13042-2008 (O&M)
Date of decision : 21.02.2023

Naurati Lal .....Petitioner(s)

Versus

State of Haryana and another ..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Ms.Vibhuti Narania, Advocate and
Mr.Vishal Pundir, Advocate for the petitioner(s)

Ms.Aditi Girdhar, AAG, Haryana

Mr.Divay Sarup, Advocate for respondent No.2.

AMAN CHAUDHARY, J.

The present petition under Section 482 Cr.P.C. has been filed for quashing of FIR No.336 dated 08.07.2005, registered under Sections 406, 420, 500 and 506 IPC at Police Station Civil Lines, Karnal and the consequential proceedings arising therefrom.

Briefly put, the allegations as made in the complaint is that the air condition was installed by the petitioner in the building of the complainant after causing harassment to him i.e. not settled within the time frame and even the entire work was not completed. The safety control was connected and thereafter, connected with the compressor directly with malafide intention to cause harm to the complainant's building. The warranty card was also not supplied.

Initially, respondent No.2 had filed a complaint under Section 12 of the Consumer Protection Act to which, the petitioner filed written statement, Annexure P-2, whereafter the same was withdrawn by him vide

Annexure P-3 after pursuing the same for 2 years, with liberty to file a civil suit. Besides the aforesaid, he also filed a criminal complaint dated 15.06.2005, Annexure P-4 under Section 156(3) Cr.P.C. before the Chief Judicial Magistrate, Karnal, upon which, FIR No.336 dated 08.08.2005 was registered under Sections 406, 420, 500, 506 IPC at Police Station Civil Lines, Karnal against the petitioner and the Managing Director of Blue Star limited, with same very allegations as averred in the complaint. The final report under Section 173 Cr.P.C. was presented in the Court on 10.10.2006, whereby Mathew Varghese, working as Deputy General Manager of M/s Blue Star Ltd was not challaned, whereas the petitioner being the installer was challaned. Consequently he was wrongly charge-sheeted vide order dated 18.09.2006 by the learned trial Court.

Learned counsel has contended that the challan was submitted without any basis. It is apparent that the virtually the entire complaint was reproduced in the final report submitted by the police. No evidence had been collected to substantiate the ingredients of the offences. He submitted that the complainant initially filed a complaint before the Consumer Form with regard to the deficiency in service, which was dismissed as withdrawn and liberty to file a civil suit within a period of two months from the date of withdrawal of the said complaint, however, instead of filing the civil suit, for which he was granted liberty, the complainant filed a criminal complaint. The allegation primarily made against the petitioner pertains to deficiency in service regarding installation of the Air-conditioning plant. which is purely a matter of civil nature being an execution of a contract but has been given a criminal colour only to harass and pressurize the petitioner. Thus the proceedings are unjust, unfair and by way of an abuse of the process of law, there are no allegations that right from the beginning of the transaction the petitioner had any dishonest intention of cheating. Still further there is no evidence with regard to any offence under Section 506 IPC. To bolster his submissions, he has placed reliance on the judgment of this Court in case titled as **Kuljive Mahajan vs. State of Haryana and another**, CRM-M-18224-2014, decided on 18.10.2022.

On the other hand, learned counsel for respondent No.2 has submitted that the petitioner has cheated the complainant by misappropriating the money given to him. He has intentionally disconnected the safety control of air conditioner and connected it with compressor directly. As the ingredients of Sections 406, 420 and 506 are clearly made out against the petitioner, therefore, he was rightly challaned by the investigating agency and charge sheeted by the learned Court. Thus, he prayed for the dismissal of the present petition.

Heard.

It is apt to refer to Section 482 CrPC for its object and scope, which can be invoked by the High Court, reads thus:

> "482. Saving of inherent power of the High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

Hon'ble The Supreme Court of India while interpreting the above provision in the case of **State of U.P. vs. R.K. Srivastava** 1989(4) SCC 59 held that, "It is now a well settled principle of law that if the allegations made in the FIR are taken at their face value and accepted in their entirety do not constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed."

The genesis of the complaint filed under Section 156 (3) CrPC, based on which the FIR in question was registered was the allegations against the petitioner that after taking the money by the petitioner as per the agreement executed between them, for installation of the plant of M/s Blue Star air conditioning company, in the building of the complainant, neither the work was completed nor the warranty card was issued by the petitioner.

Hon'ble The Supreme Court in the case of I**nder Mohan Goswami and another Vs. State of Utranchal and others** 2007 (4) RCR (Crl.) 548 (SC) while relying on **Indian Oil Corporation vs. NEPC India Ltd. and others** (2006) 6 SCC 736, wherein on breach of contractual obligations, held that there is a growing tendency in business circles to convert purely simple disputes into criminal cases because civil remedies are time consuming. In such cases, the court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused.

In the case of **U.Dhar Vs. State of Jharkhand,** 2003 (2) RCR (Crl.) 659 (SC), Hon'ble The Supreme Court of India quashed the orders of the High Court refusing to quash the order of taking cognizance by the Chief Judicial Magistrate, of an offence against the appellant with regard to a contract awarded by Bokaro Steel Plant to M/s Tata Iron & Steel Co.Ltd for certain works, who further awarded the work to M/s Singh Construction Co, the complainant, the payment for which was not received after completion of work, which was disputed by the Tata Construction-the appellant.

Disputes which are purely of civil nature and pertaining to contracts cannot be brought before the criminal courts to harass and pressurise the accused.

It would be apposite to refer to as to what amounts to misappropriation under Section 405 and cheating under Section 415 IPC;

> **405. 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". 1[Explanation 2[1].—A person, being an employer 3[of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.] 4[Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]
> Illustrations
> (a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriate them to his own use. A has committed criminal breach of trust.
> (b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall

be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the direction and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Explanation.—A dishonest concealment of facts is a deception within the meaning of this section. Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.
(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
(e) A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.
(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.
(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.
(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.
(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

Hon'ble The Supreme court of India in the cases of **Ram Biraji Devi and another Vs Umesh Kumar Singh and another**, 2006 (3) RCR (Criminal) and **RK Sharma vs State of U.P.**, 2006 (4) RCR 142 held that, "in case of breach of agreement between the parties or refusal to execute agreement cannot be termed as cheating or misappropriation and the same amounts to civil liability."

In the case of **H.R. Verma vs. State of BIhar**, 2000 SCC 2431, Hon'ble The Supreme Court of India held as under:

> "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, depends upon the intention of the accused of 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 shows 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".

In the case of **Anil Mahajan vs. Bhor Industries Ltd.** 2006 RCR (Crl.) 834, Hon'ble The Supreme Court of India, in case involving offences under Sections 415 and 420 IPC held that fraudulent and dishonest intention must be shown to be existing from the very beginning of the transaction. From mere failure to keep the promise at a subsequent stage, offence of cheating cannot be made out. Distinction between offence of cheating and mere breach of contract should be kept in mind. The use of word cheating in the complaint would not be sufficient, 2001 (1) RCR (Cri) 756 relied"

It is apt to make a reference of Section 506 IPC prescribes punishment for criminal intimidation. Criminal intimidation has been defined in Section 503 IPC, which reads as under:-

> "503. Criminal intimidation.--Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or

> to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.
> Explanation. --A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section. Illustration A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation."

While examining the ingredients of Sections 503 and 506 IPC, Hon'ble The Supreme Court of India in the case of **Manik Taneja v. State of Karnataka** (2015) 7 SCC 423, held that, **"**In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. <u>But material has to be placed on record to show that the intention is to cause alarm to the complainant.</u> From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty."

In the case of **Anand Kumar Mohatta and another vs. State (NCT of Delhi), Department of Home and another** (2019) 11 SCC 706, Hon'ble The Supreme Court of India has observed that, "There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court."

Learned trial Court while framing the charge, ought to have seen that a case essentially of civil nature, has been given a cloak of criminal offence and the criminal proceedings being not a short cut of other remedies available in law, issued the process, which has to be exercised with a great deal of caution as for the accused it is a serious matter, as held by Hon'ble The Supreme Court of India in the case of **G. Sagar Suri and another vs. State of UP and others** (2000)2 SCC 636, wherein it was also observed that in exercise of jurisdiction under Section 482 of the Code, the High Court is not to examine the matter superficially but with a great care, to prevent abuse of the process of any court or otherwise to secure the ends of justice.

Adverting to the facts of the present case, the dispute that had arisen between the petitioner and the complainant was regards the air conditioning plant manufactured by Blue Star company, the installer of which was the petitioner. The company was also therefore arrayed as an accused, however, was not challaned. The complainant began the litigation with regard to deficiency in service by filing a complaint under the Consumer Protection Act, 1986, which was however, got dismissed as withdrawn by him with costs of Rs.10,000/-vide order dated 23.05.2007, with liberty to file a civil suit. Instead of filing a suit, he filed a criminal complaint under Sections 406, 420, 500, 506 IPC, upon which FIR in question came to be registered against the petitioner and he was charge sheeted vide order dated 18.09.2006, Annexure P-7, under Sections 406, 420, 506 IPC. It is imperative to note that even a bare reading of complaint does not disclose ingredients of offence of misappropriation and criminal breach of trust or cheating to have been committed by the petitioner. The intention to cheat from the very inception, which is the gist of the offence, has not been established even after conduct of investigation, which is apparent from the Final Report. To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention, which has neither been the allegations as per the complaint nor has any evidence emerged in that regard. The complainant had failed to make out any case as per which, the petitioner can be said to have dishonestly misappropriated or converted to his own use the property, or dishonestly used or disposed of the air conditioning plant, for which he was a mere installer and the allegation was of the same being faulty. Likewise, there is no material to substantiate the offence of criminal intimidation as no evidence was brought forth in the final report regarding the intention of the petitioner to cause alarm to the complainant. For a case of breach of agreement between the parties or refusal to rectify the deficiency in installation of the air conditioning plant manufactured by the company- Blue Star, no criminal liability could be fastened upon the petitioner. Since, no iota of evidence could be collected by the police during investigation, that discloses the charge against the petitioner, no offence under the sections as alleged in the FIR could be held to have been attracted, thus, allowing the proceeding to continue would be an abuse of the process of the Court and the ends of justice require that the proceedings in the present case be quashed, in the exercise of the wholesome power under Section 482 of the Code as held by Hon’ble The Supreme Court of in the case of **State of Karnataka v. L. Muniswamy and Others,** AIR (1977) SC 1489.

The present case falls within the settled parameters as laid down in the case of **State of Haryana v. Bhajan Lal**, 1992 SCC (Cri) 426, followed in the case of **Ahmad Ali Quraishi and another vs. State of Uttar Pradesh and another,** (2020) 13 SCC 435, by Hon'ble The Supreme Court of India, which read thus:

> "10. Before we enter into facts of the present case and submissions made by the learned counsel for the parties, it is necessary to look into the scope and ambit of inherent jurisdiction which is exercised by the High Court under Section 482 CrPC. This Court had the occasion to consider the scope and jurisdiction of Section 482 CrPC. This Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426] , had elaborately considered the scope and ambit of Section 482 CrPC/Article 226 of the Constitution in the context of quashing the criminal proceedings. In para 102, this Court enumerated seven categories of cases where power can be exercised under Article 226 of the Constitution/Section 482 CrPC by the High Court for quashing the criminal proceedings. Para 102 is as follows : (SCC pp. 378-79)
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> "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 Act concerned (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 Act concerned, 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."

In the view of the above discussion, the present petition is allowed and the FIR in question alongwith all consequential proceedings are hereby quashed.

21.02.2023 **(AMAN CHAUDHARY)**
gsv **JUDGE**

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