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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION : 20.09.2023

1. CRM-M-19901-2011 (O&M)

Mohd. Ibrahim and another …**Petitioners**

Versus

State of Punjab and another …**Respondents**

2. CRM-M-8098 OF 2012 (O&M)

P. Srinivasa Rao …**Petitioner**

Versus

State of Punjab and another …**Respondents**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Gourav Mohunta, Advocate,
For the petitioner (s).

Mr. Mohit Thakur, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Vide this common order/judgment, afore-mentioned two petitions arising out of the same FIR, of which quashing herein is sought, are being disposed of. For brevity, recitals are taken from CRM-M-19901 of 2011 i.e. the earlier of the two.

2. Petitioners, partners of a firm M/s Shamoon Exims of Hyderabad, and their firm used to have regular business of supply/purchase of rice with compliant company- M/s Laxmi Energy and Foods Limited having its registered office at Chandigarh and has got its rice shelling unit in Khamanon, District Fatehgarh Sahib, Punjab. Their business arrangement went disarray resulting in registration of an FIR No.5 dated 19.01.2011 against the petitioners under Sections 420, 406, 465, 467, 468, 471, 474, 477, 120-B of Indian Penal

Code at Police Sation Khamanon, District Fatehgarh Sahib. A civil suit for recovery by the complainant company and counter claim by the petitioners was also filed qua the same very transaction. More of it later.

3. Succinct facts, for better appreciation, are summarized chronologically in tabular form as below:-

18.02.2008	Petitioners' firm appointed as super stockist of M/s Laxmi Energy and Foods Limited i.e. complainant company.
01.07.2009	Petitioners' firm was supplied 402 MT rice (10,100 bags) of Pusa basmati rice by complainant in Hyderabad.
	Allegedly, rice emitted foul smell so petitioners' firm refused to make payment.
27.10.2009	Complainant decided to take back the entire stock of 402 MT of rice.
27.10.2009	Petitioners' firm conveyed to the complainant that they are ready to make the payment for the rice stock.
28.10.2009	Payment of Rs.1,20,00,000/- through RTGS to the complainant company
09.12.2009	Further Rs.20.00 lacs was also paid. Total payment made was Rs.1.45 crores
17.04.2010	Petitioners' firm sold 10 MT of rice @ Rs.40/- per kg without the consent of the complainant, to avoid further perishing/loss of the stock.
27.04.2010	Complainant sought payment of the entire stock @ Rs.80/- per kg from the date of billing.
13.05.2010	Legal notice was served by the petitioners asking that the complainant should pay an amount of Rs.2,50,30,000/- for damages and harassment towards the rice stocks.
	It was stated in the notice that foul rice stock of 250 MT was in their possession.
	However, complainant demanded an amount of

	Rs.1,79,42,000/- for 224.275 MT of basmati rice stock along with interest from the petitioners, alleging fraud etc.
19.07.2010 (Annexure P-2)	Civil suit for recovery was filed by the complainant company against the petitioners seeking recovery of an amount of Rs.1,99,63,301/- (principal Rs.1,79,42,000/- and interest of Rs.20,21,301/-).
22.08.2010 Annexure P-3	Written statement/Counter-claim was filed by petitioners claiming an amount of Rs.1,86,36,301/- along with @ 16% per annum.
19.10.2010 Annexure P-4	Application under Order 39 Rule 1 and 2 CPC filed by the complainant for interim injunction seeking permission to shift the rice stock lying in the custody of petitioners was dismissed as infructuous vide order dated 19.10.2010 as rice being perishable good was sold by the petitioners, qua the sale of which part payment was duly made to the complainant.
19.01.2011	As a counter blast, while the suit/counter claim were still pending, a belated FIR in question was registered against the petitioners.
04.07.2011	Hence the instant petition files seeking quashing of the aforesaid FIR, arising out of the civil dispute for which suit was *sub judice*.
21.07.2022 (Annexure P-6)	Civil suit was partly decreed for a sum of Rs.1,13,45,220/- along with simple interest @ 9% per annum, against the petitioners and in favor of the complainant company.

4. The FIR outlines the allegations that M/s Shamoon Foods/Exims, Hyderabad, and the complainant company, M/s Laxmi Energy and Foods Limited, had prior dealings regarding the supply of rice stocks. In 2009, M/s Shamoon ordered 402 metric tons (MT) of Pusa basmati rice in a total of 10,100 bags from Laxmi Energy and Foods Limited. The rates for the rice were

agreed upon were 210 MT @ Rs.80/- per kg; 85 MT @ Rs.75/- per kg and 107 MT @ Rs.75/- per kg. M/s Shamoon refused to make payment for the rice due to an alleged foul smell emitted by the rice. In response, Laxmi Energy and Foods Limited offered to take back the entire stock of rice but Shamoon informed that they would make payment for half of the rice stock by November 1, 2009, and the remaining half by November 15, 2009. Shamoon neither supplied the balance rice as agreed nor made the payment, leading to allegations of cheating, criminal breach of trust, and misappropriation and hence the FIR.

5. It is alleged in the FIR that M/s Shamoon Foods had no intention from the beginning to make payment for the rice supplied, thereby committing cheating under Section 415 of the IPC and punishable under Section 420 of the IPC.

6. Learned counsel for the petitioners would argue that:-

6.1 Case is of civil nature pertaining to non-payment of rice supplied which is a pure commercial transaction being given a criminal colour by the complainant through registration of the present FIR.

6.2 Payment of Rs.1.45 crores for the rice supplied has already been made by the petitioners to the complainant on 28.10.2009 and 09.12.2009. He would refer to the admission of the complainant in the FIR itself that said money had indeed been received from petitioners.

6.3 There is thus no *mens-rea* to cheat attracting the offence under Section 420 IPC in as much as an amount of Rs1.45 crores has been paid to the complainant by the petitioners as is evident on perusal of the FIR.

6.4 Being a commercial transaction for which part payment has duly been made to the complainant company by the petitioners, the offence of criminal breach of trust under Section 406 IPC is not made.

6.5 No misappropriation of rice is there as payment has been made to the complainant company by the petitioners and for rest of the dispute, civil suit for recovery qua the balance payment has been partly decreed in their favour vide judgment dated 21.07.2022.

6.6. FIR has been lodged after a delay of 1 year and 3 months; as the occurrence is of 01.07.2009 while the present FIR has been registered on 19.01.2011.

6.7. Civil suit was filed on 19.07.2010. Temporary injunction application was dismissed on 19.10.2010 by the Civil court and the present FIR was registered thereafter on 19.01.2011 as a coercive and an arm-twisting tactic by the complainant.

6.8. Complainant company in the *interregnum* has been liquidated and the official liquidator so appointed is taking care of the assets and liabilities of the company.

7. In support of his aforesaid arguments, learned counsel for the petitioners relies upon case law rendered in *"Shilpa Ajawani and others vs. UT Chandigarh and others"*[1], *"Vijay Kumar Ghai v. State of West Bengal and others"*[2], *"Professor R.K. Vijayasarathy and another v. Sudha Seetharam and another"*[3], *"Veer Parkash Sharma v. Anil Kumar Aggarwal and others"*[4] and "*M/s Naim Tobacco Private Limited v. Ever Green Drums and Canons*"[5].

8. Per contra, learned State counsel opposes the petition. FIR has rightly been registered after preliminarily investigating the matter.

9. I have heard rival contentions of learned counsels for parties and have gone through the case file carefully.

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[1] 2020(1) RCR (Crl.) 934
[2] 2022 (2) RCR (Crl.) 528
[3] 2019 (16) SCC 739
[4] 2007 (7) SCC 373
[5] 2011 (4) AICLR 307

10. While issuing notice of motion on 12.07.2011, co-ordinate bench of this court, then was seized of the matter, had stayed further proceedings *qua* the petitioners.

11. Having perused the case file and after giving my thought to the competition arguments, I am of the view that it is an out-right case of civil dispute and no ingredients of any offence as alleged are made out. Offence under Sections 406 and 420 IPC are *anti-thesis* to each other and the both cannot be invoked simultaneously, if based on same facts and allegations.

11.1. While Section 406 IPC pertains to criminal breach of trust and Section 420 IPC relates to cheating, these offenses though may not *per se* be inherently contradictory, but the same set of facts ordinarily would not warrant simultaneous invocation in tune with legal principle of avoiding *double jeopardy*. Unless, of course simultaneous invocation is justified based on the specific circumstances, which is not so in the case in hand. The allegations/facts underlying both sections essentially overlap in the present case, thus invoking both the section i.e. 406 and 420 of the IPC is superfluous.

11.2. Even otherwise from the allegations made against the petitioners no *mens-rea* is made out which is a *sine qua non* to invoke criminal jurisdiction.

11.3. At the most it is a case of breach of contract and same has been illegally framed as cheating in the FIR.

11.4. There is an inordinate delay in registration of FIR which too cannot be countenanced in the instant case.

12. In the context of aforementioned discussion, reliance in particular may be had on Apex Court judgments rendered in **Vijay Kumar Ghai's case and Professor R.K. Vijayasarathy's case, *supra*.** To establish the charges under Sections 406 and 420 of the IPC, the complainant must demonstrate an

intention to cheat or defraud from the beginning. Additionally, it must be proven that the complainant suffered a loss, resulting in a gain for the accused. In this case, the complaint/FIR has been filed after a significant delay, seemingly for the purpose of harassing the petitioners, as collateral means to put pressure for recovery of money for which civil suit was already pending. For an offense under Section 420, cheating is essential, but the complaint/FIR lacks the necessary elements. In cases where a civil dispute is dressed as a criminal offense without the necessary elements, it amounts to an abuse of processes and criminal proceedings ought to be quashed.

13. In the premise, it is an appropriate case for exercise of power under Section 482 Cr.P.C. and bring to an end the criminal proceedings initiated pursuant to the FIR in question.

14. As an upshot, both the petitions are allowed. FIR No.5 dated 19.01.2011 registered under Sections 420, 406, 465, 467, 468, 471, 474, 477, 120-B of Indian Penal Code at Police Station Khamanon, District Fatehgarh Sahib, is hereby quashed and all proceedings emanating therefrom *qua* the petitioner stands quashed.

15. Pending application(s), if any, shall also stand disposed of.

September 20, 2023 **(ARUN MONGA)**
Shalini/Ajay **JUDGE**

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