IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-23275-2017 (O&M)
Date of Reserve: 09.03.2023
Date of Pronouncement: 21.03.2023

Ranjit Singh Bath and another ....Petitioners

Versus

UT Chandigarh and another .... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. Abhay S. Mann, Mr. G.S.Salana and
Mr. S.S.Swaich, Advocates
for the petitioners.

Mr. Amit Kumar Goyal, APP, U.T., Chandigarh.

Mr. S.S.Narula, Advocate
for respondent No.2.

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MANJARI NEHRU KAUL, J.

The petitioners are seeking quashing of criminal complaint No. 226 instituted on 05.05.2017 (Annexure P-15) titled as 'Baljinder Singh v. Ranjit Singh Bath and another' under Sections 406, 420, 120-B IPC filed under Section 156(3) Cr.P.C. (hereinafter referred to as 'Code') before the learned. JMIC, Chandigarh, as well as order dated 14.06.2017 (Annexure P-16) passed under Section 156(3) of the Code by the learned JMIC in the said complaint, whereby learned JMIC has directed the S.H.O. Police Station Sector 34, Chandigarh, to register an F.I.R. under Sections 420, 120-B IPC against them and for quashing the consequent F.I.R. No. 201 dated 19.06.2017 (Annexure P-18) under Sections 420, 120-B IPC registered at Police Station Sector 34,Chandigarh, along with all subsequent proceedings, pursuant to the said FIR.

Learned counsel for the petitioners *inter alia* contends that the impugned order dated 14.06.2017 (Annexure P-16) whereby the Judicial Magistrate 1st Class, Chandigarh (hereinafter referred to as the 'Magistrate') directed registration of FIR against the petitioners suffers from a patent procedural illegality. Learned counsel submits that it is a settled principle of law that once the Magistrate has taken cognizance of an offence and directed investigation by the police under Section 202 of the Code, it would not be open for him to revert to the pre-cognizance stage and direct registration of an FIR under Section 156(3) of the Code. Learned counsel has argued that in the case in hand after taking cognizance on the complaint filed by respondent No.2, the Magistrate directed investigation by the S.H.O. concerned and called for its report, therefore, the subsequent order dated 14.06.2017 under Section 156(3) of the Code could not be sustained. Learned counsel has further contended that the Magistrate has passed a non-speaking order, as he has failed to record any reasons while directing registration of the FIR. Learned counsel has still further argued that the Magistrate has failed to appreciate that the dispute between the parties is essentially of a civil nature which has been given a criminal complexion by respondent No.2 with the sole motive to harass and exert pressure upon the petitioners. He has submitted that on two earlier occasions the police had conducted a thorough enquiry into the complaint moved by the respondent No. 2, wherein even the police concluded that the dispute was civil in nature and thus, refused to register an FIR. Learned counsel invited the attention of this court to police Inquiry report dated 17.09.2015 (Annexure P14) which was conducted subsequent to the second complaint dated 18.05.2015

(Annexure P14/A) moved by respondent No.2 to the police, which had also been quashed by this court vide order dated 20.09.2016 (Annexure P-13). He has, thus, asserted that not only has respondent No.2 already availed of his civil remedy by filing a suit for specific performance but also failed to abide by the consent order dated 27.03.2015 (Annexure P-10) passed by the Arbitrator. Therefore, the criminal proceedings initiated against the petitioners deserved to be quashed. He has still further asserted vehemently that even otherwise on a bare perusal of the allegations levelled against the petitioners, the essential ingredients to attract the mischief of an offence under Section 420 IPC were clearly amiss and in the worst case scenario, though not admitted, it could at best be taken to be a case of breach of contract. In support of his submissions, learned counsel has placed reliance upon:

- ***Ramdev Food Products Private Limited v. State of Gujarat*** *2015 (6) SCC 439;*
- ***Mrs. Priyanka Srivastava and Another v. State of U.P. and others*** *2015 (2) RCR (Criminal) 1034;*
- ***Anil Kumar and others v. M.K.Aiyappa and another*** *2013 (10) SCC 705;*
- ***Dr. Rini Johar & Another v. State of M.P. & others*** *2016 (11) SCC 703;*
- ***Inder Mohan Goswami & Another v. State of Uttaranchal & others*** *2007 (1) SCC 1; and*
- ***Wyeth Limited & Ors. v. State of Bihar & Anr.*** *Criminal Appeal No.1224 of 2022 decided on 11.08.2022.*

Per contra learned counsel for respondent No.2 while controverting the submissions made by the counsel opposite contends that the impugned order directing the registration of the FIR against the petitioners does not suffer from any procedural illegality as the matter is still at the pre-cognizance stage; the Magistrate had not taken cognizance of the offences yet and as such there was no bar in directing the registration of an FIR. He has further argued that in the two inquiries conducted by the police relevant facts and material which were provided by respondent No.2, had been intentionally ignored by the police while exonerating the petitioners. In support of his submissions, learned counsel has invited the attention of this court to Annexure P-11 wherein the aforesaid fact also stands noticed by the Police Complaints Authority (hereinafter referred to as 'PCA'). It has still further been contended by the learned counsel, while inviting the attention of this court to Annexure P-14, that in the inquiry conducted by an officer of the rank of DIG, subsequent to the order passed by the PCA, the said officer found commission of cognizable offences, including that of cheating, by the petitioners and accordingly recommended registration of an FIR under Sections 406, 420, 120-B of the IPC against them.

Learned counsel has thus submitted that on the face of it, it is apparent that the petitioners had dishonestly induced respondent No.2 to enter into an Agreement to Sell dated 30.01.2011 and Joint Venture Agreement dated 08.05.2011. Soon thereafter the petitioners took a loan from State Bank of Patiala by mortgaging the house without as much as sending any intimation qua the same to respondent No.2. Learned counsel has urged that all this has to be appreciated in the light of not only the factum of Agreement to Sell between the parties having been concealed by the petitioners in the undertaking given to the bank while obtaining the loan, but also the factum of respondent No.2 having a share to the extent of 50% in the house. Learned counsel has further asserted that the malicious intent on part of the petitioners was further writ large from the fact that when the

Bank auctioned the house and returned an amount of Rs.72 lakhs to the petitioners, they did not pay even a single penny to respondent No.2 and instead pocketed the entire amount by themselves, even though it was a matter of record, that in the entire transaction the petitioners had spent only an amount of Rs.18 lakhs. Thus, it was obvious that the petitioners, after swallowing the amount returned by the Bank, not only made a profit of Rs.72 lakhs but also caused a wrongful loss of Rs.1.75 crore to the respondent No.2. Learned counsel has asserted with vehemence that when all the above submitted facts and circumstances are appreciated and seen in their entirety, it becomes abundantly clear that the petitioners have cheated and defrauded respondent No.2 as part of a well planned criminal conspiracy and therefore, it cannot by any stretch of imagination be said to be a purely civil dispute, as was being intentionally portrayed by the learned counsel opposite.

It has lastly been vehemently urged that as far as the consent order passed by the Arbitrator is concerned, respondent No.2 was unable to act on the same due to the failure of the petitioners to negotiate with the Bank, as a result of which the house in question was auctioned by the Bank within two months of the passing of consent award.

I have heard learned counsel for the parties and perused the relevant material on record.

This court does not find any merit in the submissions made by the learned counsel for the petitioners that since the Magistrate had taken cognizance, it could not have directed the registration of an FIR under Section 156(3) Code.

It may be noticed here that the Code postulates investigation by the police at pre-cognizance stage under Section 156 (Chapter XII) as well as at the post cognizance stage under Section 202 (Chapter XV). For facility of reference, Sections 156 & 202 of the Code are being reproduced:-

> “**156. Police officer's power to investigate cognizable case**.-
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> (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
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> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
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> (3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.
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> **202. Postponement of issue of process.-**
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> (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:
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> Provided that no such direction for investigation shall be made,--
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> > (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or
> >
> > (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200
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> (2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant."

It follows from a perusal of the above provisions that at the pre-cognizance stage, the Magistrate after considering the material on record can direct the registration of an FIR under Section 156(3) of the Code. However, at the post cognizance stage after examination of the complainant and his witnesses, if any, the Magistrate has to take recourse to Section 202 of the Code wherein he may either conduct an enquiry by himself or direct investigation by the police to ascertain as to whether or not there is sufficient ground for proceeding against an accused.

It would be apposite to point out here that an order under Section 156(3) of the Code is in fact in the nature of a reminder to the police to perform its duty and investigate into the alleged cognizable offence(s) under Section 156 of the Code. At the stage of ordering investigation under Section 156 (3) of the Code, it cannot, therefore, be said that cognizance of the offences alleged has been taken by the Magistrate. For the purpose of post cognizance investigation contemplated under Section 202 of the Code, cognizance can be said to be taken by a Magistrate only, when it applies its judicial mind to the contents of the complaint, to proceed under Section 200 of the Code.

Adverting to the case in hand, the respondent No.2 moved an application under Section 156(3) of the Code for registration of FIR against the petitioners only after the police failed to register an FIR on his complaints. A perusal of the impugned order clearly reveals that the Magistrate called for a report from the S.H.O. concerned and after applying its judicial mind to the complaint, directed the police to register the FIR and investigate into the same. Hence, it is evident that the Magistrate had not taken cognizance at that stage and the matter was still at the pre-cognizance stage. As already observed hereinabove, once cognizance of the offence(s) had not been taken by the Magistrate, the submissions made by the learned counsel for the petitioners that the Magistrate had reverted to the pre cognizance stage, while issuing directions under Section 156(3) of the Code, are totally misconceived and without any force.

The next submission made by the learned counsel for the petitioners is that even on a bare perusal of the allegations levelled in the complaint, offences under Sections 406, 420 IPC are not made out. The necessary ingredients to attract the mischief of an offence under Section 420 IPC are as follows:-

- The accused must commit offence of cheating under Section 415 IPC;
- The person cheated must be dishonestly induced to :

  a) deliver property to any person; or

  b) make, alter or destroy valuable security or anything signed or sealed, capable of being converted into a valuable security.

A distinction, thus, has to be drawn between a mere breach of contract and an offence of cheating. Fraudulent and dishonest intention has to be shown at the very threshold of a transaction i.e. at the time of making a promise, to hold a person guilty of an offence of cheating, and subsequent failure to keep up the promise at best, would be a mere breach of contract which would not fall within the ambit of the offence of cheating, however, the dishonest intention of the accused, at the time of inducement, can also be inferred by his subsequent conduct, in some cases.

Adverting to the case in hand, a perusal of the allegations levelled in the complaint (Annexure P-15) as well as the FIR in question *prima facie* reveals the commission of a cognizable offence under Section 420 IPC. The complainant-respondent No.2 has levelled specific allegations that the petitioners induced him to enter into an Agreement to Sell qua the house in question and a Joint Venture Agreement, and further to part with a huge sum of money amounting to Rs.1.75 crore, whereas the petitioners themselves contributed only Rs.18 lakhs. Still further, the complainant has also alleged that the petitioners without as much as even informing him, raised a huge loan of Rs.82 lakhs against the property in question, after mortgaging it with the bank; thereafter also defaulted to re-pay the loan, as a result of which the property was auctioned by the concerned bank. It has also been alleged that though an amount of Rs.72 lakhs was returned by the bank to the petitioners, after adjusting the loan amount out of the auction price, however, not even a single penny was paid to the complainant and instead the entire amount i.e. Rs.72 lakhs had been swallowed by them. The learned counsel for the petitioners was not able to controvert the said fact qua the petitioners having not paid a single penny to the complainant out of Rs.72 lakhs, received from the bank. Furthermore, the complainant has also alleged that the petitioners, even after one year of getting the property transferred in their name had failed to take any steps to demolish the existing construction and raising a three storeyed building, as per the Joint

Venture Agreement. Rather, it was after one year that they vacated the property, and it was only respondent no. 2 who incurred all the expenses qua the demolition of the existing construction.

All the above facts and circumstances when seen in their entirety *prima facie* do reflect an element of criminality in the dispute between the parties and thus it cannot be said to be a dispute of purely civil nature.

The Hon'ble Supreme Court in ***Arun Bhandari vs. State of UP*** *2013 (2) RCR (Crl.) 261* has held as under:-

> "24. *At this stage, we may usefully note that sometimes a case may apparently look to be of civil nature or may involve a commercial transaction but such civil disputes or commercial disputes in certain circumstances may also contain ingredients of criminal offences and such disputes have to be entertained notwithstanding they are also civil disputes. In this context, we may reproduce a passage from Mohammed Ibrahim and others v. State of Bihar and another: -*
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> *"8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes.* ***But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes.*** *(See G. Sagar Suri v. State of U.P and Indian Oil Corpn. v. NEPC India Ltd.)"*

This court does not concur with the submissions made by the learned counsel for the petitioners that civil remedy is available to the complainant and since he had earlier invoked the arbitration clause, initiation of criminal proceedings could not be permitted to continue. It would be relevant to observe here that in the facts and circumstances of a given case, there can be no embargo on an aggrieved person to avail of both his civil and criminal remedies simultaneously. However, merely because civil remedy is available to a person, it would be unfair and unjust to deprive such a person from taking recourse to criminal proceedings.

The Hon'ble Supreme Court in ***Priti Saraf vs State of NCT of Delhi*** *2021 (2) RCR (Crl.) 340* while dealing with similar facts and circumstances held as under:-

> "33. …… *The facts narrated in the present complaint/FIR/charge-sheet indeed reveal the commercial transaction but that is hardly a reason for holding that the offence of cheating would elude from such transaction. In fact, many a times, offence of cheating is committed in the course of commercial transactions and the illustrations have been set out under Sections 415, 418 and 420 IPC. Similar observations have been made by this Court in Trisuns Chemical Industry Vs. Rajesh Agarwal and Ors.(supra) :-*
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> *"9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified*

only in very extreme cases as indicated in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335]"

34. So far as initiation of arbitral proceedings is concerned, there is no correlation with the criminal proceedings....."

The factum of the petitioners in the instant case being initially exonerated by the police would also not come to their rescue as it is a matter of record that in the third enquiry (Annexure P-14) which was conducted by an officer of the rank of DIG, the registration of FIR against the petitioners was recommended. It would be pertinent to point out here that though this court vide order dated 20.09.2013 (Annexure P-13) set aside the third enquiry (P-14) but it was due to lack of jurisdiction of PCA to delve into the merits of any enquiry conducted by any police officer. Furthermore, it is the categoric case of the complainant that the police in its earlier enquiry failed to consider and take into account the entire material provided by him and arrived at an erroneous conclusion.

It would also be pertinent to mention here that the case is still at the nascent stage with the investigation still pending, therefore, it would not be appropriate for this court to scuttle prosecution at this stage, more so, as already observed earlier, in the light of the allegations levelled, which *prima facie* reveal the commission of cognizable offences.

It would be relevant to refer to the ratio of law laid down by the Hon'ble Supreme Court in ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others*** *2021 AIR (SC) 1918*:-

"*i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*

ii) Courts would not thwart any investigation into the *cognizable offences;*

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the *conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

The case laws relied upon by the learned counsel for the petitioners would thus not further his cause as firstly the investigation is still underway and secondly a *prima facie* case is made out against the petitioners. The inherent jurisdiction of this court under Section 482 of the Code being an extraordinary power, has to be exercised sparingly and with a great deal of care and circumspection and that too in the rarest of rare cases. Furthermore, when quashing of FIR is sought by an accused, this court in exercise of its power under Section 482 of the Code has to only consider as to whether the allegations levelled in the FIR disclose the commission of a cognizable offence or not. At this stage, the court is not to delve into the merits of the case and to go into the authenticity and truthfulness or otherwise, of the allegations levelled.

Accordingly, the petition is dismissed.

(MANJARI NEHRU KAUL)
JUDGE

21.03.2023
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Note: Whether speaking/reasoned Yes / No
Whether Reportable: Yes / No