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

**CRM-36727-2023 in/and
CRM-M-15246-2022 (O&M)
Date of decision: 19.09.2023**

Shiv Modgil and another ….Petitioners

Versus

Mandeep Singh ….Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Puneet Sharma, Advocate
for the applicant/petitioners.

Ms. Saguna Arora, Advocate
for the non-applicant/respondent.

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<u>PANKAJ JAIN, J. (ORAL)</u>

CRM-36727-2023

For the reasons stated in application, same is allowed subject to all just exceptions. Documents (Annexures P-25 to P-30) are taken on record.

CRM-M-15246-2022 (O&M)

Petitioners have invoked Section 482 Cr.P.C. seeking quashing of Complaint under Sections 406, 420, 34, 120-B IPC bearing No.COMI/65/2019 titled as *Mandeep Singh vs. Shiv Modgil and another* (Annexure P-14) along with summoning order dated 18.01.2022 (Annexure P-16) whereby the petitioners stand summoned for offences punishable under Sections 406, 420 IPC read with Section 34 IPC.

2. Complaint was filed by the respondent who is claimed to have been in contractual relationship with the petitioners *qua* educational institute being run in the premises owned by the complainant/respondent which was affiliated to Punjab Technical University, Jalandhar. The relationship of the parties is stated to be based upon Memorandum of Understanding dated 20.09.2014 (Annexure P-1). It was innovated by another Memorandum of Understanding (MOU) dated 20.10.2016 (Annexure P-5). It is a subsequent MOU which will be relevant for adjudication of the present case.

2.1. The complaint was filed by the respondent against the petitioner alleging : a) that the petitioners were in arrears of rent w.e.f. October, 2017 till the date of filing of the complaint; b) that the accused have not paid Rs.33,63,682/- (Rupees Thirty Three Lakh Sixty Three Thousand Six Hundred & Eighty Two Only) to the Punjab Technical University, Jalandhar towards outstanding dues of "Hoshiarpur Institute of Management and Technology College", Hoshiarpur and the said amount has not been paid despite the fact that the said payment was received from the office of Directorate of Welfare of S.C. and B.C., Chandigarh; c) it was further contended in the complaint that the accused/petitioners executed affidavit dated 20.11.2018, wherein it was stated on oath by the petitioners assuring to clear the amount due to Maa Chintpurni Educational Society (Regd.) at the time payment received from the office of Directorate of Welfare of S.C. and B.C., Chandigarh from 19.11.2018 onwards; d) further the petitioners undertook to clear the due payments of P.T.U. and other departments pertaining to the tenure from 20.09.2014 upto the time of exit by accused/petitioners or on completion of the terms of MOU dated 20.10.2016, whichever is earlier; e) that the accused having failed to abide by their undertakings, in connivance with each other, with *malafide* and dishonest intention have caused wrongful financial loss to the complainant/society and therefore they need to be summoned for offences punishable under Sections 406, 420 IPC read with Section 34 IPC.

2.2. On the complaint made by the respondent and after analysing evidence brought on record by the complainant/respondent, the trial Court summoned the petitioners. Petitioners are before this Court impugning the aforesaid complaint as well as the summoning order.

3. Counsel representing the petitioners has attacked the complaint as well as the summoning order contending that relationship between the parties was purely contractual and commercial in nature and the settlement of accounts cannot be a subject matter of criminal complaint. It has been thus contended that a matter which is purely civil in nature has been given a criminal colour just to arm-twist the petitioners. Counsel for the petitioners further submits that there is an arbitration agreement between the parties and the complainant has already preferred arbitration case and the Arbitrator already stands appointed. Thus, the present proceedings are abuse of process of law. It has been further contended that disputes have already been settled between the parties vide Memorandum of Settlement dated 18.06.2018 (Annexure P-7). Thus, there was no occasion for the complainant to file the present complaint. Counsel for the petitioners further submits that the complainant/respondent is approbating and reprobating in

the same breath. On one hand, the dispute has been raised at his behest with the authority with respect to entitlement of amounts that the authorities are required to pay to the society and on the other hand the complainant has complained cheating against the petitioners in the present complaint on the ground that inspite of payment received from the office of authorities they have not paid to the complainant/respondent.

4. Counsel for the petitioners further submits that if any of the parties can be said to be in breach of the settlement it is only and only the complainant/respondent. As per him the same is evident from the fact that amounts were received from the Government in September, 2018, however, the cheques were presented by the complainant/respondent in August, 2018 i.e. prior to receiving of amount.

5. Counsel for the petitioners further relies upon catena of judgments including the judgment passed by the Apex Court in ***Wyeth Limited and others vs. State of Bihar and another*[1]*.** He claims that in almost same background the Apex Court found that no offence is made out and thus quashed the criminal proceedings.

6. *Per contra,* counsel for the complainant/respondent submits that the intent of the accused/petitioners is evident from the record and is writ large. Having executed affidavit admitting their liability to transfer the said amount on receiving the same from the Government, they failed to transfer the same. It is a clear case of cheating wherein the petitioners have duped the complainant/respondent in inducing them to allow

[1]**2022 SCC OnLine SC 2038**

accused/petitioners to retain the property of the society. She further submits that the property of the society was entrusted to the accused/petitioners and such entrustment was owing to certain obligations which the petitioners have failed to discharge and thus it is a clear case of offence as defined under Section 405 IPC. Resultantly, the Trial Court has validly passed the order summoning the petitioners to face trial. She further submits that the Arbitrator was appointed. However, after the petitioners failed to pay their share of fee, the Arbitrator offered to discharge the mandate. The complainant/respondent was constrained to approach this Court by way of petition under Section 227 of the Constitution of India, wherein further proceedings before the Arbitrator stand stayed. She further submits that there is no such axiomatic rule that where parties are bound by an arbitration agreement, invoking of arbitration clause leads to ouster of criminal proceedings. Rather law is to the contrary.

7. I have heard counsel for the parties and have gone through records of the case.

8. In order to appreciate the arguments raised by counsel for the parties it will be apt to peruse Section 415 IPC as well Section 405 IPC which define Cheating and Criminal breach of trust, respectively. Section 415 IPC and Section 405 IPC read as under:-

> *"**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.

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".*

[Explanation [1].—A person, being an employer [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.] [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.]"

9. The question before this Court is as to whether the allegations levelled in the complaint constitute an offence as defined under Section 405/415 IPC or not.

10. So far as the contention raised by counsel for the petitioners that the parties are having commercial relationship and thus criminal prosecution is barred, the same is misconceived. Reliance can be placed upon ***Pratibha Rani vs. Suraj Kumar***[2], wherein Apex Court held as under :

> *".....There are a large number of cases where criminal law and civil law can run side by side. the two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property of the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrong deer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import......"*

11. Coming to the second limb of argument with respect to the parallel arbitration proceedings going on and its effect on the criminal

[2] **1985(1) RCR (Criminal) 539**

proceeding, the law is well settled as has been laid down by the Apex Court in ***Trisuns Chemical Industry vs. Rajesh Agarwal and others***[3] as under:-

> ***"…….7.*** *Time and again this Court has been pointing out that quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions (vide State of Haryana v. Bhajan Lal,1992 Supp (1) SCC 335).*
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> ***8.*** *In the last referred case this Court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations:*
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>> *"10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions."*
>
> ***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*

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[3] **(1999) 8 SCC 686**

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

12. Thus, this Court does not find any reason to quash the present proceedings only for the reason that relationship between the parties was purely contractual and commercial in nature and/or there is an arbitration agreement between the parties and arbitration clause stands invoked by the complainant/respondent. The execution of the affidavit as pleaded in the complaint is not disputed rather forms part of the present petition filed by the petitioners under Section 482 Cr.P.C. So far as the question as to the breach of the settlement as has been claimed by counsel for the petitioners is concerned, trite it is that this Court while exercising its power under Section 482 Cr.P.C. cannot conduct a mini trial. This Court is well conscious of its limitations and cannot go into the disputed questions of fact while embarking upon to entertain a petition filed by petitioners under Section 482 Cr.P.C.

13. In view of above, this Court does not find that present impugned complaint is so bereft of the basic ingredients that the same can be quashed for not disclosing the offence punishable under Sections 406, 420 IPC.

14. Resultantly, the petition is dismissed being devoid of merit. Needless to say that observations made herein above are only for the purpose of adjudicating present petition under Section 482 Cr.P.C. and shall have no bearing on the case, in case the Trial Court after analyzing the evidence on record comes to the conclusion otherwise.

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

(PANKAJ JAIN)
JUDGE

September 19, 2023
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No