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

109 **CRM M-25471 of 2014**
Date of Decision: 11.12.2023

Balwinder Kumar @ Jwala ...Petitioner

Versus

Raj Rani and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present:- Mr. L.S. Mann, Advocate for the petitioner.
Mr. Aditiya Dassaur, Advocate for respondents No. 1 and 2.
Mr. Mohit Chaudhary, AAG, Punjab.
Mr. Ankur Sharma, Advocate for
Mr. Amrita Singh, Advocate
for the respondent No. 3.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the complaint No. 342/1/2012 dated 07.11.2012 titled as **"Raj Rani Vs. Jawala and others"** under Sections 406, 420 and 506-B IPC, which **was** pending in the Court of Judicial Magistrate 1st Class Jalandhar and all subsequent proceedings arising therefrom.

2. A short reply by way of an affidavit of the Deputy Superintendent of Police, NRI Wing, Sub-Division, Jalandhar-1 has been filed on behalf of the respondent No.2-State and the same is taken on record.

2. The complaint in the present case was filed by respondent No. 1 under Sections 406, 420 and 506 IPC. As per respondent No. 1-complainant, she is NRI and permanently settled in England. The petitioner/accused and co-accused Bindu were closely related to respondent No. 1/Complainant. The petitioner and Bindu, co-accused were running a finance company under the name and style of M/s Jalandhar Capital Services Private Limited, having its registered office At 59, Ranjit Nagar Jalandhar. Another accused Rajinder was also running the business with them. The respondent No. 1 and her husband were having good family relations with the petitioner and his co-accused. They were well aware of the good financial status of respondent No. 1 as they were well settled in England. The petitioner and his co-accused made an allurement to the respondent No. 1 that they would pay the interest at the rate of 18% per annum, which was higher than the interest rate given by the bank. The complainant and her husband believed their words and were trapped in the net of the accused. On different dates, a total sum of Rs. 39 lacs was handed over to the petitioner and his co-accused. The accused did not issue any original FDR's, but later on they had handed over different receipts to respondent No. 1. All the amounts were handed over to the accused in the presence of Balbir Ram and Ram Pyari, mother of the complainant/respondent No. 1. Later on,

FDR's were also issued to the respondent No. 1 by the accused with the assurance that an interest at the rate of 18% per annum would be paid to her. However, no amount was paid to the respondent No. 1. When the respondent No. 1 and her husband demanded their money, the accused started making one pretext or the other. In April 2012, respondent No. 1 again visited India and inquired from the accused, however, they flatly refused to return the amount of FDR's alongwith interest and threatened the respondent No. 1. Respondent No. 1 made a complaint to the Commissioner of Police through the Police Station NRI Sabha Punjab, but the police did not take any action in the matter. After the filing of the aforesaid complaint, the respondent No. 1 examined Ram Pyari, mother of the complainant as CW1, Darshan Kumar as CW2, Balbir Ram as CW3 and the complainant herself appeared as CW4. Even HC Nirmal Chand was examined as CW5. Vide order dated 06.09.2013 passed by the Judicial Magistate 1st Class Jalandhar, the petitioner No. 1 and co-accused were ordered to be summoned under Sections 406, 420 and 506 IPC. Accordingly, challenging the impugned complaint (Annexure P-1) and summoning order (Annexure P-2), the petitioner has filed the present petition before this Court.

3. Learned counsel for the petitioner contended that respondent No.1/complainant is the maternal sister of the petitioner. In the complaint, it has been wrongly alleged that the petitioner was working as Managing Director of the Firm M/s Jalander Capital

Services Private Limited. In fact, the petitioner was running a gas agency since the last so many years in the area of Phillaur and had never indulged in any business of finance as alleged in the complaint. Even the petitioner had no concern whatsoever with the finance company. Moreover, Ex.C-1 to Ex. C-14 did not bear the signatures of the petitioner. Learned counsel further contended that first transaction in the present case had taken place in the year 1999 and the last transaction was on 18.04.2004. However, the complaint was moved to the police in the year 2012 and in view of Section 468 Cr.P.C., the complaint was not maintainable before this Court. Still further, in the present case, the inquiries were conducted by the various police officers and the allegations leveled by the complainant were not found to be correct. Still further, it was a financial dispute between respondent No. 1 and the Managing Director of the complainant, namely, Harbhajan Bhatia. However, Harbhajan Bhatia expired later on and the petitioner was falsely involved in the present case. Apart from that, when the respondent No. 1 and her muscle men started harassing the petitioner, his sister and brother-in-law by filing various false complaints. The petitioner filed a suit on 27.08.2012 (Annexure P-10) with a prayer to restrain the respondent No.1, their attorneys and agents from recovering any amount forcibly and illegally or with the help of the police. Consequently, it is a civil suit, which has been given the colour of criminal offence and the petition is liable to be allowed by this Court.

4. On the other hand, learned counsel appearing on behalf of respondent No. 1 submitted that there are specific allegations against the present petitioner. In fact, the respondent No.1/complainant is the cousin of the present petitioner and other accused, namely, Bindu. Due to close relationship, the respondent No. 1 trusted them and invested money in their finance company. Even, the petitioner and his other co-accused had assured the complaint that the money would be deposited in the fixed deposits and an interest at the rate of 18% per annum would be provided to respondent No. 1, which is much higher than the rate of interest given by the bank. Even, learned counsel appearing on behalf of respondent No. 1 referred to the annual returns filed by the Jalandher Capital Services Private Limited (Annexure R-1 and R-2), which clearly showed that the present petitioner was acting as Director of the finance company, where the respondent had invested the money. Still further, learned counsel submitted that the petitioner was prosecuted under the various provisions of the Indian Penal Code and it was not a prosecution under the provisions of the Companies Act. Thus, whether the petitioner was acting as Director/Managing Director of the Company or not, was immaterial. In fact, the petitioner was one of the main accused, who had taken about Rs.39 lacs from the respondent No.1/complainant on different dates and later on cheated the respondent No. 1 of her hard earned money.

5. I have heard the learned counsel for the parties and perused the record.

6. The primary contention raised on behalf of the petitioner is that the petitioner had no concern with the finance company M/s Jalandher Capital Services Private Limited and he was running a gas agency in the area of Phillaur. It was further alleged that it was a financial dispute between the said company and respondent No.1 and petitioner never acted as director of the said company. On the other hand, learned counsel appearing on behalf of respondent No.1 had placed reliance on Annexures R-1 and R-2, i.e., the annual return of the finance company under the provisions of Companies Act and the present petitioner had been shown as one of the Directors of the Company. Apart from that, even he was one of the major shareholders in the company as well as on 30.09.2004. Apart from that, the complainant had examined several witnesses, in whose presence, the money was handed over to the petitioner and his co-accused. Thus, it is apparent that the complainant had been able to *prima facie* show that the present petitioner was also involved in the affairs of the finance company M/s Jalandher Capital Services Private Limited. Even otherwise, the petitioner has raised several disputed questions of fact, which can never be adjudicated upon by this Court while exercising its jurisdiction under Section 482 Cr.P.C. Whether the petitioner was a Director/Managing Director/Employee of M/s Jalandher Capital Services Private Limited, is a fact, regarding which,

both the sides are required to lead their respective evidence and the said fact can only be established only during the course of trial.

7. Even, the Hon'ble Supreme Court has held in the matter of **Central Bureau of Investigation Vs. Aryan Singh etc. AIR 2023 (Supreme Court) 1987,** as follows:-

> *"4. Having gone through the impugned common judgment and order passed by the High Court quashing the criminal proceedings and discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings in exercise of the limited powers under Section 482 Cr.P.C., 1973 and/or in exercise of the powers under Article 226 of the Constitution of India.*
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> *4.1 From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., 1973 the Court is not required to conduct the mini trial. The High Court in the common impugned*

judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., 1973 the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".

4.2 One another reason pointed by the High Court is that the initiation of the criminal proceedings / proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been chargesheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings / proceedings is malicious.

> *Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried".*

8. Still further, learned counsel appearing on behalf of the petitioner submitted that in the present case, the first transaction took place in the year 1999 and the last transaction was on 18.04.2004 whereas the first complaint was moved by the respondent No. 1/complainant in the year 2012 and the cognizance of the complaint shall be barred in view of the provisions contained under Section 468 Cr.P.C. In fact, in the present case, the petitioner has been summoned in the provisions of Sections 406, 420 and 506 IPC. The maximum punishment provided by the statute for the offence under Section 420 IPC is 07 years and as a consequence the provisions of Section 468 Cr.P.C. would not apply to the facts of the present case. The provisions of Section 468 Cr.P.C. are applicable for only those offences, which are punishable for a term not exceeding 03 years. Thus, there is no merit in the argument raised by the learned counsel for the petitioner and the same is rejected.

9. Learned counsel for the petitioner had further submitted that during the various police inquiries, the matter was found to be

false and the complaints filed by the present petitioner were ordered to be filed by the police. However, the said argument cannot serve as a basis for quashing of a legitimate prosecution, filed by way of a complaint. The respondent No. 10 specifically pleaded in the complaint that she made complaints to the police authorities but no action was taken by the police in collusion with the accused. Ultimately, she was constrained to file a criminal complaint before the Court of Judicial Magistrate 1st Class. Thus, there is no substance in the argument raised on behalf of learned counsel for the petitioner.

10. In view of the above discussion, there is no merit in the present petition and deserves dismissal by this Court.

11. Dismissed.

12. All pending applications, if any, are disposed off, accordingly.

11.12.2023 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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