

205

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

Date of Decision: 05.07.2023

1. CRM-M-39379-2018 (O&M)

Nidhi

Vs.

.. Petitioner

**State of Punjab and another
AND**

..Respondents

2. CRM-M-40713-2018 (O&M)

Gagandeep Singh

Vs.

.. Petitioner

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Ms. Sapna Khurana, Advocate for
Mr. Vaibhag Narang, Advocate
for the petitioner in **CRM-M-39379-2018**.

Mr. Umesh Aggarwal, Advocate
for the petitioner in **CRM-M-40713-2018**.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. Anupam Bhardwaj, Advocate
for respondent No.2.

...

Manoj Bajaj, J. (Oral)

The petitioners have filed the above petitions separately for quashing of FIR No.63 dated 26.07.2016 registered under Sections 420, 468, 471 and 120-B IPC, 1860 at Police Station Raja Sansi, District Amritsar (Rural) and the consequential proceedings arising therefrom.

Briefly, the facts leading to the petitions are that complainant, namely, Gurtej Singh, partner of M/s Garry Filling Station gave written complaint dated 28.03.2016 to Senior Superintendent of Police, Amritsar (Rural) against accused persons, namely, Rajbir Singh @ Rajdeep Singh s/o

Baldev Singh @ Bhai Singh, Gagandeep Singh s/o Baldev Singh @ Bhai Singh, Satnam Singh, Rahul s/o Gopa, Nidhi w/o Rajbir Singh @ Rajdeep Singh, Rupinder Kaur w/o Baldev Singh for registration of case for alleged commission of offences punishable under Sections 420, 468, 471 and 120-B IPC, and alleged that the firm M/s Garry Filling Station holds valid licence bearing No.P/NC/PB/14/2878/P180599 for running a filling station. According to the complainant, accused Rajbir Singh @ Rajdeep Singh had issued two cheques bearing No.000026 dated 20.02.2016 and 000024 dated 25.02.2016 amounting to Rs.7,00,000/- and Rs.5,50,098/-, respectively, drawn at HDFC Bank Ltd. Branch Gopal Nagar, Majitha Road, Amritsar in favour of the complainant firm, but upon presentation before State Bank of Patiala, the cheques were returned back unpaid with the remarks 'funds insufficient', vide respective returning memos dated 24.02.2016 and 16.03.2016. Thereafter, complainant along with his brother-in-law, namely, Jagmohan Singh s/o Lakhwinder Singh approached the accused persons, but they threatened him. As per allegations, complainant came to know that all the accused persons being related to each other used to cheat many innocent persons and a similar complaint was given by one Major P.S. Hundal against them, who is also running a petrol pump, wherein the inquiry is pending. The accused persons in connivance with each other induced the complainant to fill the diesel in the vehicles of M/s Guru Kirpa Plastic Company worth Rs.12,53,149/- and against the said material, above mentioned bogus cheques were issued, which were dishonoured and this has resulted in wrongful gain to the accused persons and wrongful loss to the complainant. On these broad allegations, the FIR was registered on 26.07.2016.

Aggrieved against the registration of the case, the petitioners invoked the inherent powers of this Court by way of filing the petitions under Section 482 Cr.P.C. on the ground that they have been falsely implicated in this case, as they have no role to play in the alleged transaction between the complainant and accused Rajbir Singh @ Rajdeep Singh, which on the face of it, is otherwise purely of civil nature and their implication is nothing, but abuse of process of law. The petitioners have prayed that the impugned FIR and proceedings arising out of it be quashed qua them.

Pursuant to the notice of motion issued in these cases in September, 2018, the proceedings before the trial Court qua the petitioners were ordered to be stayed. In response to the petitions, the respective replies by way of affidavit of Sohan Singh, PPS, Deputy Superintendent of Police, Sub-Division Ajnala, Amritsar (Rural) on behalf of respondent No.1-State have been filed. However, Mr. Anupam Bhardwaj, learned counsel representing the complainant did not file any reply and chose to adopt the reply filed by respondent No.1.

Mr. Umesh Aggarwal, learned counsel for the petitioner-Gagandeep Singh has argued that a bare reading of the allegations contained in the FIR would make it clear that the complainant had entered into a business transaction with accused Rajbir Singh @ Rajdeep Singh and the outstanding amount of Rs.12,53,149/- also stands acknowledged by him, as in order to discharge the said liability, he had issued two cheques in favour of the complainant in February, 2016. According to him, in the FIR, no role is attributed to the petitioner, who is implicated solely on the ground that he is brother of co-accused Rajbir Singh @ Rajdeep Singh. He submits that in

the similar manner, the other petitioner, namely, Nidhi has been implicated being wife of Rajbir Singh @ Rajdeep Singh. Learned counsel has argued that the complainant has not availed any remedy of filing of civil suit for recovery of the debt and has chosen to lodge the FIR in order to pressurize the debtor to pay the amount. According to the learned counsel, even if, it is assumed that the complainant has suffered wrongful loss, the said act and omission is attributed to Rajbir Singh @ Rajdeep Singh. He submits that respondent No.1 has also not properly appreciated the contents of the complaint filed by the complainant and wrongfully implicated the petitioners in the case as accused. He prays that the impugned FIR and the proceedings arising out of it be quashed.

In addition to above submissions, Ms. Sapna Khurana, learned counsel for the petitioner-Nidhi has submitted that the relations between Rajbir Singh @ Rajdeep Singh and petitioner Nidhi were strained for a long time, who were having a matrimonial dispute and after registration of the case, their marriage also stands dissolved vide judgment and decree dated 08.03.2017. She submits that the petitioner-Nidhi had no connection with the business run by co-accused Rajbir Singh @ Rajdeep Singh and prays that the FIR and the proceedings arising therefrom deserve to be quashed, as the same are baseless and without any foundation.

Learned State counsel assisted by the counsel for the complainant as well as ASI Sukhwant Singh has argued that the complaint dated 28.03.2016 submitted by complainant-respondent No.2 was inquired into and it was found that the complainant-Gurtej Singh owns a petrol filling Station, where 20-25 vehicles belonging to M/s Guru Kirpa Plastic Company run by Rajbir Singh @ Rajdeep Singh got fuel filled on credit

basis and as per agreement, the payment of the fuel was to be made after 15 days either through cheque or in cash. The filling of fuel in the vehicles started on 02.01.2016 and against this, the slips were issued and the first payment of Rs.3,30,000/- was made through cheque to clear the cost of material upto 22.01.2016. Thereafter, the fuel was filled in the vehicles and against the total debt amounting to Rs.12,53,149/- the cheques issued by accused were dishonoured. Learned State counsel has argued that according to the verification by complainant, the photocopy of passport No.G3733027 dated 04.02.2007 which was given by Rajbir Singh @ Rajdeep Singh to the complainant was found in the name of Rajinder Singh s/o Haqam Singh and this shows that they had intentions from the beginning to cheat the complainant. He while referring to the reply submitted on behalf of respondent No.1 has argued that whenever the meeting took place, the petitioners, who are brother and wife of Rajbir Singh @ Rajdeep Singh used to accompany him, therefore, they were also equally involved in the crime, and the FIR has been registered after detailed inquiry, which *prima facie* discloses commission of cognizable offences, and further during the pendency of the petitions, after conclusion of the investigation, the final report against the accused persons was filed on 30.05.2017. He prays that the petitions be dismissed.

At this stage, learned counsel for the complainant has argued that the main accused Rajbir Singh @ Rajdeep Singh has already been declared proclaimed person in the case, who is yet to be arrested. He submits that the petitioners are closely related to the main accused and they also connived with him in order to commit the offence of cheating. Learned counsel submits that as the final report stands filed, the petitioners can raise

their defence during trial and no interference is called for by this Court in exercise of jurisdiction under Section 482 Cr.P.C.

During the course of hearing, it is not disputed by learned State counsel as well as the learned counsel for the complainant that the complainant has separately instituted the complaints under Section 138 Negotiable Instruments Act, 1881 against accused Rajbir Singh @ Rajdeep Singh for dishonour of the cheques amounting to Rs.12,50,098/-, which are pending. Apart from it, learned counsel for the complainant fairly states that the petitioners have been implicated on the strength of criminal conspiracy punishable under Section 120-B IPC.

Learned counsel for the parties have been heard and with their assistance, case files perused carefully.

Firstly, while examining the impugned FIR, this Court finds that the complainant has specifically stated that accused Rajbir Singh @ Rajdeep Singh had issued two cheques in his favour total amounting to Rs.12,50,098/- and the said cheques were dishonoured upon presentation and this is the amount of alleged wrongful loss suffered by the complainant. Besides, the assurance regarding clearance of debt was also given by the said accused to the complainant and the business deal entered into by complainant was with the accused Rajbir Singh @ Rajdeep Singh alone. Further, in the reply filed by respondent No.1-State of Punjab, it has been highlighted that prior to the dishonour of the instruments mentioned in the FIR, the accused Rajbir Singh @ Rajdeep Singh had made a payment of Rs.3,30,000/- and this payment was towards the clearance debt towards filling of fuel upto 22.01.2016. All these facts clearly establish that in the subject business deal, petitioners Nidhi and Gagandeep Singh have no role

to play.

During the course of hearing, it has been fairly stated by the learned State counsel as well as learned counsel for the complainant that the petitioners have been made accused on the strength of criminal conspiracy punishable under Section 120-B IPC, but there is nothing on record to indicate that any wrongful gain was made by these petitioners. Of course, during the pendency of the petitions, final report under Section 173(2) Cr.P.C. has been filed, but according to the learned State counsel in the said report as well, the petitioners were sent to face trial for their involvement in the crime, as they accompanied Rajbir Singh @ Rajdeep Singh to the complainant, but there is no allegation in the FIR that the petitioners either induced the complainant to supply fuel on credit basis or ever made any promise to make the payment, which was not kept by them. Even otherwise, concededly the dues relating to the previous transactions were cleared by the co-accused Rajbir Singh @ Rajdeep Singh through cheques and all these facts collectively show that the petitioners have been arraigned as accused in the FIR being close relatives of the co-accused Rajbir Singh @ Rajdeep Singh. Even if, the entire allegations contained in the FIR are taken to be true on its face value, no offence whatsoever is made out against these petitioners.

Here, it will be useful to rely upon the judgment rendered by Hon'ble Supreme Court in *State of Haryana and others v. Ch. Bhajan Lal and others, 1991(1) R.C.R. (Criminal) 383: 1992 Supp(1) Supreme Court Cases 335*, the Apex Court has held as under:-

"The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482. Cr.P.C., 1973 can be exercised by the High Court 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 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 concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of 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.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be

exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

Similarly, it would be useful to rely upon judgment of Hon'ble Supreme Court in ***Satishchandra Ratanlal Shah v. State of Gujarat and another in 2019(2) R.C.R.(Criminal) 145: Criminal Appeal No.9 of 2019 (Arising out of SLP (Crl.) No.5223 of 2018), decided on 03.1.2019,*** wherein the penal proceedings based on the similar grounds of non-payment of loan amount were set aside and the said proceedings based on the FIR were quashed. The relevant paragraphs are reproduced hereunder:-

10. Before we analyse this case, it is to be noted that the criminal application preferred by the accused before the High Court was against the order of the Trial Court at the stage of framing of charges, wherein it is the duty of the Court to apply its judicial mind to the material placed before it and to come to a clear conclusion that a prima face case has been made out against the accused. An order for framing of charges is of serious concern to the accused as it affects his liberty substantially. Courts must therefore be cautious that their decision at this stage causes no irreparable harm to the accused.

*11. Coming to the aspect of quashing of the charges, it is well settled that such exercise needs to be undertaken by the High Court in exceptional cases. It is also well settled that the framing of charges being initial stages in the trial process, the court therein cannot base the decision of quashing the charge on the basis of the quality or quantity of evidence rather the enquiry must be limited to a prima facie examination [refer to ***State of Bihar v. Ramesh Singh, 1977 CriLJ 1606***).*

12. Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to Section 405 read with 406 of IPC, we observe that the dispute arises out of a loan transaction between the parties. It falls from the record that the respondent No.2 knew the appellant and the attendant circumstances before

lending the loan. Further it is an admitted fact that in order to recover the aforesaid amount, the respondent No.2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognizes a difference between simple payment/investment of money and entrustment of money or property A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 I.P.C. without there being a clear case of entrustment."

Thus, in view of the facts and circumstances of this case as well as the above noticed decisions of the Hon'ble Supreme Court, this Court unhesitatingly comes to the conclusion that the criminal prosecution of the petitioners in the impugned FIR is wholly unjustified, as they have no role in the alleged transaction between the complainant and co-accused Rajbir Singh @ Rajdeep Singh and their implication is nothing but an abuse of the process of the law.

Resultantly, the impugned FIR No.63 dated 26.07.2016 registered under Sections 420, 468, 471 and 120-B IPC, 1860 at Police Station Raja Sansi, District Amritsar (Rural) and the consequential proceedings arising therefrom are hereby quashed qua the petitioners.

05.07.2023
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No