

120 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24602-2023 (O/M)
Date of decision : 15.05.2023

Balkar Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present:- Ms. Kiranjeet Kaur, Advocate
for the petitioner.

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HARSH BUNGER, J.

1. Petitioner (Balkar Singh) has filed the present petition under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No. 303 dated 10.10.2017 (Annexure P-1) registered under Sections 420, 120 B IPC at Police Station City Ferozepur, District Ferozepur and all subsequent proceedings arising therefrom.

2. Briefly, the aforesaid FIR was registered on the complaint of Surjan Singh son of Ram Singh wherein it was stated that he was acquainted with Balkar Singh alias Baba (petitioner herein) of Ferozepur City, since long time. Said Balkar Singh alias Baba is stated to be working as an agent at Nature Heights Infra Limited Office, Ferozepur and was also working as a

helper in the Department of Youth Services, Ferozepur. In the said complaint, it was alleged that in the year 2011, Balkar Singh alias Baba (petitioner herein) had visited complainant (Surjan Singh) at his house and told him that his company, whose owner is Neeraj Kumar Arora; has purchased land at village Darban Khas, Pathankot, in which the company is giving plots of 2000 square feet against an amount of Rs. 20,000/- payable annually for five years, in five installments. As per the complainant, Balkar Singh alias Baba (petitioner herein) is alleged to have stated that he himself has purchased a plot there and accordingly complainant also agreed to purchase a plot and after 4-5 days, Balkar Singh alias Baba (petitioner herein) took complainant Surjan Singh alongwith him to village Darban Khas and there Neeraj Kumar Arora had shown the revenue records/documents to the complainant and stated that he had purchased this land earlier, wherein the plots will be carved out and given from this land and by pointing towards nearby short boundary walled plot stated that said plot has been purchased by his company. As per the complainant, after returning from there, on 05.05.2011, Neeraj Kumar Arora alongwith Balkar Singh alias Baba (petitioner herein) and other company employees came to the house of complainant (Surjan Singh) where the deal regarding the plot was finalized and the complainant is stated to have given Cheque No. 253373 of Rs. 20,000/- to Balkar Singh (petitioner herein) who is stated to have handed over the same to Neeraj Kumar Arora whereupon Neeraj Kumar Arora had issued Receipt No. 3676 dated 05.05.2011 and gave the same to complainant (Surjan Singh). In the complaint, it is mentioned that the complainant (Surjan Singh) gave more cheques of different dates i.e. cheque No. 753383

dated 21.05.2013, cheque No. 753390 dated 31.05.2013, cheque No. 235174 dated 20.05.2014 and cheque No. 235198 dated 31.05.2015 and one agreement dated 16.09.2011 is alleged to have been typed and executed in favour of complainant (Surjan Singh) and another letter from the company was also handed over to the complainant. It is alleged that despite payment of Rs. 1,00,000/-, neither any plot nor any ownership of any plot has been given. It is further alleged that fake and forged documents were prepared by Neeraj Kumar Arora by showing property of someone else to the complainant on the spot and accordingly, Neeraj Kumar Arora, Amit Kumar, Shifali and Shinderpal in connivance with each other are alleged to have committed cheating with the help of Balkar Singh alias Baba (petitioner herein), who allures simple people in his talks and then they all commit cheating. It is further mentioned that a number of cases are registered against Neeraj Kumar Arora and he alongwith his co-associates are absconding.

3. It appears that the said complaint was looked into and it was found that Neeraj Kumar Arora, resident of Abohar, had opened an office in the name of Nature Heights Infra Limited, Ferozepur City, in the year 2011, wherein Amit Kumar, Shifali, Shinderpal and Balkar Singh alias Baba (petitioner herein) used to work and in connivance with each other, they have taken complainant (Surjan Singh) into confidence and by showing fake documents of agreement and other documents got deposited a sum of Rs. 1,00,000/- through different cheques in respect of the land situated in village Darban Khas, Pathankot, and thereafter, neither the plot was given nor the registry was done. Accordingly, it was recommended to obtain legal opinion, which was obtained

from Deputy District Attorney (Legal), Ferozepur, who submitted his report dated 14.07.2017 wherein it was stated as under :-

“Therefore, from the investigation conducted so far, it has come to light that the manner in which Neeraj Arora and his company men have committed cheating with other people there is one Surjan son of Ram Singh resident of Vikas Vihar, with whom the proprietor of Infra Nature Heights Limited namely Neeraj Kumar Arora, Safali, Chhinderpal Singh, Balkar Singh etc. have connived and committed cheating with the people on the pretext of giving plots. Therefore, it is recommended that a case be registered against these persons.”

4. After investigation, a Challan (Annexure P-2) was submitted against the petitioner, wherein it was stated that Balkar Singh alias Baba (petitioner herein) was granted bail, whereas other co-accused persons could not be traced and the accused Neeraj Kumar Arora, Amit Kukkar and Shifali Anand have been declared proclaimed offenders vide order dated 19.12.2022 passed by the Court of learned Chief Judicial Magistrate. The relevant extracts of the Challan (Annexure P-2) reads as under :-

“.... Therefore, vide Jimni No. 44 the person with the name of Shinderpal Singh has been found as innocent by Inspector Bhupinder Mohan, Incharge E.O. Wing Ferozepur. The detailed enquiry against the accused persons namely Neeraj Arora, Amit Kukkar, Shifali Anand and Balkar Singh alias Baba in the case have (has) been concluded. That from the till date enquiry in the case, from the statements of the witnesses, the accused Neeraj Arora son of Satpal Arora, Amit Kukkar son of Raj Kumar and Shefali Anand son (daughter) of Naresh Kumar Anand residents of Abohar entered in Box No. 2 and Balkar Singh alias Baba son of Buta Singh resident of Mini Azad Nagar near Bus Stand Ferozepur

City, entered in Box No. 4 the evidence liable enough for the issuance of challan U/s 420, 120 B IPC have appeared on file. That after preparing the challan U/s 173 Cr.P.C. against the accused is being produced in the Court. Cognizance be made and during cognizance, the witnesses as per the list of the witnesses entered in the box No. 6 will submit statement against the accused entered in Box No. 2 and Box No. 4. The same shall be summoned vide Summons and cognizance be made. “

5. In the backdrop of the aforementioned circumstances, petitioner has filed this petition.

6. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case. It is submitted that the allegation against the petitioner is that he had induced the complainant in the year 2011 by submitting that he has invested in a plot measuring 2000 square feet and accordingly advised the complainant to invest in the same company regarding a plot measuring 2000 square feet in five annual easy installments of Rs. 20,000/-. It is submitted that the petitioner is alleged to have introduced the complainant to the owner and other staff members of the company and except that, there is no other allegation levelled against the petitioner. It is further submitted that the petitioner is neither beneficiary nor any member or agent of the company. It is next submitted that the petitioner has joined the investigation, whereas the other co-accused have been declared proclaimed offenders, vide order dated 19.12.2022 passed by learned Chief Judicial Magistrate. Learned counsel for the petitioner would contend that the instant case is purely of civil dispute and rather the petitioner herein himself is a victim of the above said company as he had purchased one plot from the said company

in the year 2012 in the name of his wife Palwinder Kaur. It is next submitted that if any cheating has been committed by the owners of the company with the complainant, then he could seek refund by filing a civil suit or a complaint before the Consumer Disputes Redressal Forum as was done by the wife of the petitioner. It is submitted that no offence under Section 420 IPC is made out against the petitioner and thus, the continuation of prosecution against the petitioner would amount to abuse of process of law. It is stated that the complainant was an employee of Punjab Police and during his service, he (complainant) used to take services/help of the petitioner for his domestic work and the petitioner had some dispute with complainant regarding some household chores. Accordingly, it is submitted that the complaint against the petitioner is motivated and thus, prayer for quashing of the FIR has been made.

7. I have heard learned counsel for the petitioner and perused the paper book.

8. Here it would be apposite to refer to a few judicial pronouncements.

In ***Kaptan Singh v. State of Uttar Pradesh***, 2021(3) RCR (Criminal) 840, Hon'ble Supreme Court held as under:

“9.1 At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 Cr.P.C., 1973 has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C., 1973, quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and

collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the Learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. **If the petition under Section 482 Cr.P.C., 1973 was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial.** As held by this Court in the case of Dineshbhai Chandubhai Patel (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further

observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

9.2 In the case of Dhruvaram Murlidhar Sonar (Supra) after considering the decisions of this Court in Bhajan Lal (Supra), it is held by this Court that exercise of powers under Section 482 Cr.P.C., 1973 to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C., 1973 though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C., 1973. Similar view has been expressed by this Court in the case of Arvind Khanna (Supra), Managipet (Supra) and in the case of XYZ (Supra), referred to hereinabove.

9.3 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C., 1973...”

In ***Rajesh Bajaj v. State NCT of Delhi***, 1992(2) RCR (Criminal) 160 (SC), Hon'ble Supreme Court held as under:-

“7. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complaint should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny,

whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. In State of Haryana v. Bhajan Lal, 1991(1) RCR 383 (supra) this Court laid down the premise on which the FIR can be quashed in rare cases. The following observations made in the aforesaid decisions are a sound reminder (at p. 409 of RCR) :

"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."

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. One of the illustrations set out under Section 415 of the Indian Penal Code (illustrations "f") is worthy of notice now :

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."

The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the

transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

In ***Kamaladevi Agarwal v. State of West Bengal***, 2001(4) RCR (Criminal) 522, Hon'ble the Apex Court held as under:-

“15. We have already noticed that the nature and scope of civil and criminal proceedings and the standard of proof required in both matters is different and distinct. Whereas in civil proceedings the matter can be decided on the basis of probabilities, the criminal case has to be decided by adopting the standard of proof of "beyond reasonable doubt". A Constitution Bench of this Court, dealing with the similar circumstances, in M.S. Sheriff and Anr. v. State of Madras and Ors., AIR 1954 Supreme Court 397 held that where civil and criminal cases are pending, precedence shall be given to criminal proceedings. Detailing the reasons for the conclusions, the court held :

"As between the civil and the criminal proceedings were are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it expedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."

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17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings..."

9. Coming to the case in hand, a perusal of FIR would show that specific allegations have been made against the petitioner that he had induced the complainant to invest in a plot of a company namely Nature Heights Infra Limited wherein petitioner was alleged to be working. It is the case of the petitioner that the complainant was induced by the petitioner to invest in the

plot on the basis of his representation that he too has purchased a plot there and thereafter the petitioner is alleged to have facilitated a meeting between Neeraj Kumar Arora (Owner of the Company- Nature Heights Infra Limited) and the complainant. The deal regarding the sale of plot is also alleged to have taken place at the house of the complainant on 05.05.2011 where Neeraj Kumar Arora (Owner of the Company- Nature Heights Infra Limited) alongwith petitioner (Balkar Singh) is alleged to come with other company employees and the cheque No. 253373 of Rs. 20,000/- is also allegedly handed over to petitioner (Balkar Singh). It is specifically alleged that Neeraj Kumar Arora, Amit Kumar, Shifali in connivance with each other commit cheating with the help of petitioner (Balkar Singh) who allures simple people in his talks. The basis of the complaint is prima facie established from the plea taken by the petitioner that complainant can also seek refund by filing civil suit or consumer complaint as was done by his wife (Palwinder Kaur), who is also stated to have purchased a plot offered by the said company. Furthermore, the case has been investigated into and challan stands presented wherein it is specifically observed that from the till date investigation and from the statement of the witnesses, there is enough evidence against the accused Neeraj Arora, Amit Kukkar and Shefali Anand (entered in Column No. 2) and Balkar Singh alias Baba (entered in column no. 4), for the issuance of challan under Section 173 Cr.P.C. against them. Thus, keeping in view the specific allegations against the petitioner and also the subsequent filing of challan against petitioner, at this stage to opine that no case is made out for the offence under Section 420, 120-B IPC against the petitioner is premature and the aforesaid aspect is to be considered during trial.

10. Thus, keeping in view the aforestated legal position and also the circumstances mentioned above, I do not find any merit in this petition and the same is accordingly, dismissed.

11. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 Cr.P.C., 1973 only before this court and the trial Court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by this court hereinabove.

12. All pending applications (if any) shall stand closed.

(HARSH BUNGER)
JUDGE

15.05.2023
sjks

Whether speaking/reasoned order : Yes / No

Whether Reportable : Yes / No