

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-805-2018

Date of Decision:-11.12.2023

Sunil Sunkria.

.....Petitioner.

Versus

State of Punjab & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Kulbhushan Raheja, Advocate for the Petitioner.

Mr. Harkanwar Jeet Singh, AAG Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in the petition under Section 482 Cr.PC is for quashing of the FIR No.219 dated 29.10.2017 under Sections 419, 420 IPC P.S. City Sunam, District Sangrur and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that the FIR in question came to be registered on the statement of Rakesh Kumar Goyal and reads as under:-

“ To: The Station House officer, Police station City Sunam. Sir, it is requested that I, Rakesh Kumar Goyal) son of Sohan Lal Goyal, caste Aggarwal, am resident of Aggarsain Market, Street No. 4, Back side State Bank of Patiala, Main Branch, Sunam and run a commission agent shop. On the intervening night of 26/27.05.2017, theft had been committed at my house in which one Mobile Phone (Samsung S5 alongwith SIM) has been stolen (Phone No.86999-89893), this phone was in possession of my daughter Upasana Goyal and

SIM of this mobile phone had been purchased by me on the basis of the proof of my relative Gaurav Goyal son Pawan Kumar, resident of Old Anaj Mandi, Sunam. That after being stolen, I had not stopped this mobile number so that I may be able to check the location. But now few days earlier, I went to the office of TATA DACUMO for re-issuance of SIM of this phone number and informed them that I have lost my SIM so kindly issue me new SIM. On this, they told me that this SIM is still in operation and has been working in the name of some other person and it has already been ported. On this, I inquired regarding the same then I came to know from reliable sources that this SIM is being used in the name of Nitin Kumar Mittal son of Suresh Mittal, resident of near Anuwarat School, near Milan Beauty Parlor, Indra Basti, Sunam, and Nitin Kumar has got this phone (SIM) ported from TATA DOCUMO to VODAPHONE company in connivance with Kamal Garg, owner of Garg Telecom, near Bus stand, Sunam on the basis of fake proof of my relative Gaurav Goyal. and further Nitin Kumar got issued the SIM from VODAPHONE company on the basis of proof of his friend Sunil Sunkaria son of Arjan Kumar, resident of Street No.3, Indira Basti near Rogar Basti, Sunam. Therefore, Nitin Kumar, Sunil Sunkaria and Kamal Garg in connivance. with each other got issued the SIM on the basis of fake proof of my relative Gaurav Goyal, without his consent, therefore, have committed fraud by getting the same ported from TATA DOCUMO company by attaching proof of Sunil Sunkaria. So, legal action be taken against the aforesaid persons. I shall be grateful to you. Sd/- Rakesh Goyal son of Sohan Lal Goyal, dated: 29.10.2017."

3. Pursuant to the investigation, the report under Section 173(2) Cr.PC was submitted after which the charges were framed and the prosecution evidence is now being recorded.

4. The Counsel for the petitioner contends that the petitioner has

been falsely implicated at the instance of the complainant. At the time when the FIR was registered he was a student studying in Punjab University and had nothing to do with the commission of offence. As per the prosecution case Nitin Kumar had obtained SIM of Phone No.86999-89893 in connivance with Kamal Garg by using the ID proof of the present petitioner. As Nitin Kumar and Kamal Garg had used the ID proof of the petitioner, it was the petitioner who was the victim and not the accused. In fact, the petitioner had not submitted any signed document to the telecom agency. He, therefore, contends that the FIR and all the subsequent proceedings were liable to be quashed.

5. The Counsel for the State on the other hands contends that a bare reading of the FIR and the investigation conducted so far would establish the fact that all the accused in connivance with each other have committed the offence in question. The charges stood framed after which the evidence is being recorded. There was no question of quashing the FIR as disputed questions of fact had been raised which could not be adjudicated upon in summary proceedings under Section 482 Cr.PC specially once the evidence was being recorded.

6. I have heard Counsel for the parties.

7. The Statement under Section 164 Cr.PC of Gaurav Goyal is as under:-

“ Statement of Gaurav Goyal son of Pawan Kumar Goyal, Resident of Old Anaj Mandi Dr. Rajdulari’s Street Sunam about Case NO.219 dated 29.10.2017 under Section 419, 420 IPC Police Station City Sunam Under Section 161 Cr.PC

Stated that I am a resident of the above address and our iron shop is in Old Grain Market Sunam. About 3 years ago I had bought a mobile SIM from TATA Docomo company, the number of which was 8699989893. While taking this SIM

from the company, I had given the photocopy of my driving license, my photo is attached as a proof. I gave this SIM to Upasana Goyal daughter Rakesh Kumar Goyal resident of Street No.4 Backside of State Bank of Patiala Main Branch for use who studied. On the night of 26/27.5.2017 a theft occurred in the house of Rakesh Kumar Goyal in which Upasana Goyal's mobile phone brand Samsung S5 in which this SIM was inserted was also stolen. It was also discovered that location had not been suspended from the company, but a few days ago, Upasana Goyal sent her father Rakesh Kumar Goyal to the distributor Sunam's office of TATA Docomo Company to get the SIM of this number. As we investigated, I came to know that this SIM is now running with Nitin Kumar Mittal son of Suresh Mittal R/o near Anuvarat School Indira Basti Sunam and this number is now ported to Vodafone company, which I investigated, I found that Nitin Kumar along with his friend Sunil Sunakaraia son of Arjan Kumar resident of Street No.3 Indira Basti Sunam planted fake proof in place of my driving licence proof. Kamal Garg, the owner of Garg Telecom near Bus Stand, Sunam, issued a new SIM Card from TATA Docomo Company and by applying Sunil Sunakaria's proof. This phone number was ported from TATA Docomo to Vodafone Mobile Company and this phone number was retained. My consent has not been taken and I have not been told anything about it that Nitin Kumar, Sunil Sunakaria and Kamal Garg have done the porting of my SIM by falsely putting my fake proof and re-issuing my SIM. I have given the statement and heard it and it is correct.

*Sd/-
PS City Sunam
Dated:-30.10.2017"*

8. A perusal of the aforementioned statement would show that *prima facie* the petitioner in connivance with other accused has committed the offence in question. The charges already stand framed after which the evidence is being recorded. The contentions raised by the counsel for the

petitioner are essentially disputed questions of fact which cannot be adjudicated upon in the instant summary proceedings. Even otherwise, at this stage when the evidence is being recorded, the question of quashing of FIR would not arise.

9. In view of the aforementioned discussion, I find no merit in the present petition and the same is hereby dismissed.

10. However, the observations made hereinabove are only for the purposes of deciding this quashing petition and the Trial Court is free to adjudicate upon the case on the basis of the evidence led before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

December 11, 2023

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>