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

CRM-M-36864-2022 (O&M)
Reserved on : 28.07.2023
Pronounced on : 05.09.2023

Radhanath Pattanayak and others ….Petitioners

Versus

State of Haryana and another ….Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Amit Jhanji, Sr. Advocate with
Mr. Raghav Kakkar, Advocate,
Mr. Amrinder Singh, Advocate,
Mr. Sachit Singla, Advocate and
Mr. Himmat Singh Sidhu, Advocate
for the petitioners.

Mr. Ramesh Kumar Ambavta, A.A.G., Haryana.

Mr. A.P.S. Deol, Sr. Advocate with
Mr. Vishal R. Lamba, Advocate and
Mr. H.S. Deol, Advocate
for respondent No.2/complainant.

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PANKAJ JAIN, J.

Petitioners pray for quashing of FIR No.243 dated 15.07.2022 registered under Sections 406, 420, 467, 468 & 471 IPC at Police Station Kasola, District Rewari (Annexure P-1) along with all subsequent proceedings arising therefrom.

2. Respondent No.2 approached the concerned Magistrate under Section 156(3) Cr.P.C. Under the orders passed by the Magistrate the

application preferred by the complainant was entertained and an FIR was ordered to be registered vide order dated 08.02.2022 (Annexure P-9). Under the orders passed, the FIR No.0064 dated 09.02.2022 came into being which was registered under Sections 406, 420, 467, 468 & 471 IPC. The same was challenged before this Court in CRM-M No.8296 of 2022. This Court disposed off the same vide order dated 02.06.2022 (Annexure P-14) which reads as under:-

> *"By filing this petition, quashing of FIR No.64 dated 09.02.2022 under Sections 406, 420, 467, 468, 471 IPC, Police Station Kasola, District Rewari, the order dated 08.02.2022 passed by Ld. Judicial Magistrate Ist Class, Bawal, District Rewari on a complaint bearing No.COMI-4-2022 filed by respondent No.2 under Section 156(3) CrPC and all subsequent proceedings arising therefrom, is sought.*
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> *Mr.Deol, Ld. Senior Counsel appearing for respondent No.2 – complainant states that in view of the mandatory requirement that a complaint filed under Section 156(3) CrPC be supported with an affidavit of the complainant, the instant complaint having been filed without such affidavit, the impugned order dated 08.02.2022 (Annexure P-2) passed by Ld. Judicial Magistrate Ist Class, Bawal, may be set aside and all consequential proceedings including the FIR (Annexure P-1) be quashed. However, the complainant be given liberty to file a fresh complaint complying with the requirement of supporting affidavit.*
>
> *Accordingly, the order dated 08.02.2022 (Annexure P-2) is set aside. All consequential proceedings including the FIR No.64 dated 09.02.2022 under Sections 406, 420, 467, 468, 471 IPC, Police Station Kasola, District Rewari are quashed with liberty to the complainant to file a fresh complaint on the*

same cause of action and facts, by complying with the requirement of an affidavit. Disposed of accordingly."

3. The aforesaid order was impugned before the Supreme Court in SLP (Crl.) Nos.6973 of 2022 Etc. which stands dismissed by the Apex Court vide order dated 08.08.2022 observing as under:-

> *"We are not inclined to interfere with the impugned order of remand as all rights and contentions of the petitioners have been left open.*
>
> *Recording the aforesaid, the petition for special leave to appeal is dismissed.*
>
> *Pending application(s), if any, shall stand disposed of."*

4. Pursuant to the order passed by this Court dated 02.06.2022 (Annexure P-14) fresh complaint was preferred along with affidavit. The Magistrate ordered registration of FIR vide order dated 13.07.2022 (Annexure P-2) which led to registration of the impugned FIR (Annexure P-1), the contents thereof reads as under:-

> *"1. That the complainant-firm M/s. M.S. Metal, Ganpat Nagar, Circular Road, Rewari namely Arvind Kumar Saraf, Radha Nath Pattanayak and Rishabh Saraf are the Share-holder/Directors of M/s. Arcotech Limited having its property at 181, Sector-3, Bawal Growth Centre, Bawal (hereinafter referred to as "the Accused). That the accused no. 2 and 4 namely Arvind Kumar Saraf and his son Rishabh Saraf are the major shareholder in Arcotech Ltd. whereas accused no.3 Radha Nath Pattanayak is the Chairman/promoter of the said accused company. That the complainant has supplied metal scrap (copper scrap, cupro nickle scrap etc. etc.) to the accused party during the intervening period of 22.04.2017 to*

28.01.2018 amounting 3,96,03,130/- for which the order was placed by the above mentioned three accused persons (accused No 2 to 4). The copies of the relevant ledger/bills are enclosed to substantiate the fact that the above mentioned material was supplied by the complainant-firm to M/s. Acrotech Limited. That the complainant had supplied the metal scrap as per the order placed by the aforesaid accused persons and there was no deficiency or defect in the material supplied by the complainant. That no defect was ever reported by the accused person for a sufficient long period i.e. for 20 (Twenty months). On the contrary, the accused have acknowledged the receipt of the abovesaid material and their liability to the tune of Rs.3,30,89,211/-. The receipt dated 26.05.2017 issued by M/s Acrotech Limited in this regard which was duly signed by accused Radha Nath Patnayak is enclosed herewith. That the accused persons had intention to cheat the complainant from the very inception and to attain their nefarious object, the accused persons vide letter dated 10.12.2018 stated for the first time that the material supplied by the complainant was not up to the mark and that the supplied material was having iron. In fact, the above mentioned version of the accused persons is absolutely false and baseless. In fact, the ordered material was duly supplied by the complainant to the accused company as per the specification and that the said material was not having any iron contents and the same was absolutely pure as per the order/requirement of the accused. This document/letter had been prepared forged by the accused with ulterior motive of cheating the complainant. Accused had also forged certain debit notes (Copy 2 of the same are enclosed). The said debit notes had been forged by the accused in order to cheat the applicant. 9. That the following facts and the circumstances prove beyond doubt that the version of the accused is absolutely false and baseless and that their only object had been to cheat *the complainant with intent to usurp the Crores of rupees of the complainant. (1) That the accused have never supplied alleged defective material to the complainant till date and that the accused also did not return the tax amount paid by the complainant, though the accused have retained and misappropriated the said material and had not made payment of the said material. On the contrary, they have made false, frivolous and baseless allegations regarding impurity of material in order to cause wrongful loss to the complainant and on their own wrongful gain. The material in question was supplied on the dates vide separate bills and the same could not have been melted in single go because the capacity of the melting pot is very less. If the accused have come to know that the material was impure, then they should have immediately informed the complainant and should have returned the material and tax returned 17122 amount immediately which was never done by them. That as per section 34 of the CGST Act, 2017, the purchaser had no right to prepare/supply the debit notes as the said Act (section 34) makes it amply clear that the said right is only vested with the seller and that the purchaser cannot issue debit notes. It is settled practice that whenever any shortcoming found in the article/material supplied by the seller to the purchaser, the purchaser will immediately intimate the seller about the defective material and thereafter, it is the seller who will issue credit note to the purchaser and thereafter the purchaser will issue delivery challan. In the present case, the accused party had not intimated about the defective material till 10.12.2018 and they kept silent for a long period i.e. for 20 years. That the receipt dated 26.05.2017 duly signed by the accused Radha Nath Patnayak falsifies the version of the accused party and the said receipt clearly proves that the version of the accused party is totally false and baseless and that the same has been* *introduced by the accused party after due deliberation and consultation in order to deceive the complainant to the tune of Rs.3,96,03,130 interest. The version of the accused party is further falsified by the fact that the accused party had made payment to the tune of Five Lakhs on 29.04.2019, which is contrary to their stand taken by them in their email dated 16.04.2019. That the complainant had filed petition in the NCLT under the relevant provisions of law wherein the accused party had used false, manipulated and forged documents to escape their legal liability and to cheat the complainant. That the accused persons have also adopted this modus operandi with other firms/parties and they have also filed petitions against the accused company in NCLT. The copies of the same are enclosed. 10. That all the three accused Nos.2 to 4 had been managing day to day affairs of the accused company. Accused Arvind Bakumar Saraf and his Rishabh Saraf are major shareholders whereas accused Radha Nath Patnayak is Chairman/promoter of the accused company. The acknowledgement receipt dated 26.05.2017 and manipulated forged debit notes bear his signatures. Accused No 2 to 4 have been dealing with the said transactions and also managing the affairs of the accused No.1 from the very inception. 11. That the act and conduct of the accused revealed that from the very inception the accused had intention to cheat the complainant and they have wrongfully and legally retained and usurped the material which was supplied by the complainant and did not return the same and also did not pay the tax amount to the complainant and also prepared false and frivolous debit notes. 12. That the complainant had also approached the concerned police station, but the concerned SHO in collusion with the accused did not take any action against the accused nor has lodged FIR against the accused person on the basis of the aforesaid facts. 13. That when no action was taken by the* *concerned SHO of Police Station the complainant has also moved an application No.1249-PSP dated 25.10.2021 before the Superintendent of Police, but still no action has been taken against the accused persons. 14. That by means of aforesaid acts, the accused had rendered themselves liable to be prosecuted and punished under sections 406, 420, 467, 468 and 471 of the Indian Penal Code. 15. That there has been wilful disobedience of law by the accused. 16. That the office of the accused firm is situated within the jurisdiction of Police Station Kasola and that the order was also placed by the accused at Bawal and that the material was supplied accordingly to the accused at Bawal. As such, the Hon'ble Court has jurisdiction to entertain and try the present complaint. 17. That earlier on a criminal complaint was filed by the complainant against the accused before the Hon'ble Court and thereafter in terms of the order dated 08.02.2022 the Hon'ble Court was pleased to pass order under section 156(3) Cr. P.C. to get registered FIR on the basis of which FIR no. 64 dated 09.02.2022 under sections 406, 420 467, 468 and 471 of the Indian Penal Code was registered against the accused persons. Thereafter, the accused persons had moved a petition before the Hon'ble High Court of Punjab and Haryana for getting the aforesaid FIR quashed. That the Hon'ble High Court of Punjab and Haryana has passed an order dated 02.06.2022 (copy of the said order is enclosed herewith for your kind perusal). The complainant has now filed the present criminal complaint in pursuance of the order dated 02.06.2022 since the earlier criminal complaint filed by the complainant was not accompanied and supported by an affidavit. The Hon'ble High Court had given liberty to the complainant to file a fresh complaint alongwith the supporting affidavit. The complainant has complied with the directions given by the Hon'ble High Court and the present criminal complaint has been filed supported with the affidavit of the* *complainant. The same is annexed as Annexure A with the present criminal complaint. 19. That the appropriate court fees has been affixed on the complaint. PRAYER: It is, therefore, prayed- (a) That the present complaint may kindly be registered and may kindly be sent to police station Kasola, District, Rewari for registration of the FIR against the accused for the commission of the offences under sections 406, 420, 467, 468 and 471 of Indian Penal Code, under the provisions of section 156(3) of the Code of Criminal Procedure. (b) That in the alternative, accused may kindly be summoned, tried and punished in accordance with law. (c) That any other relief which this Hon'ble Court deems fit and proper, in the facts and circumstances of the case may also be granted in favour of the complainant."*

5. Learned Senior counsel for petitioners while assailing the FIR (Annexure P-1) has argued that a bare perusal of contents would reveal that in fact its a purely commercial transaction which has been given colour of criminal offence in order to arm-twist the petitioners. It has been further contended by learned Senior counsel representing the petitioners that from bare perusal of the contents of FIR (Annexure P-1) no allegation to constitute offence punishable under Sections 406, 420, 467, 468 & 471 IPC is made out. Thus, it would be a fit case to exercise jurisdiction under Section 482 Cr.P.C. to quash the FIR. Learned Senior counsel representing the petitioners has further placed reliance upon the judgment of Supreme Court in **'Bandekar Brothers Pvt. Ltd. Vs. Prasad Vassudev Keni' 2020 AIR Supreme Court 4247** to submit that the alleged forged debit notes cannot be said to be forged once the petitioners own it. Merely for the reason that they are claimed to be ante-dated cannot lead to an inference that

the same are forged. The contention raised by learned Senior counsel for petitioners seems to be attractive but is misplaced.

6. *Per contra,* leaned Senior counsel representing respondent No.2/complainant submits that it is a settled law that merely for the reason that the dispute involves commercial transaction and has a civil consequence as well, criminal prosecution cannot be held to be barred. It has been further contended that from the bare perusal of the contents of FIR (Annexure P-1) it is evident that the accused/petitioners had an intent to cheat respondent No.2/complainant from the very inception and with an intent to cause unlawful gain to themselves, the accused/petitioners dishonestly and fraudulently created antedated false documents which would amount to forgery and thus constitute offence punishable under Sections 467, 468 & 471 IPC. He further contends that the investigation being at a very nascent stage cannot be nipped in the bud. Reliance has been placed upon the judgments of the Supreme Court in the matters of ***M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others*** reported as ***2021 AIR (Supreme Court) 1918*** and ***Priti Saraf and another vs. State of NCT of Delhi and another*** reported as ***2021(2) R.C.R. (Criminal) 340W***

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

8. Law with respect to exercise of jurisdiction under Section 482 Cr.P.C. stands well settled by the Supreme Court in the case of ***State of Haryana and others vs. Ch. Bhajan Lal & others, 1992 AIR (Supreme Court) 604***, wherein while issuing a word of caution to exercise power of quashing a criminal proceeding very sparingly and with circumspection and

that too in the rarest cases, the Supreme Court has given an exhaustive list to illustrate the kinds of cases wherein such power should be exercised holding that:-

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Codeunder Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised 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 a 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 a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
>
> *(7) Where a criminal proceeding is manifestly attended with malafide 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."*

9. So far as the first limb of the argument raised by Ld. Senior Counsel representing the petitioners is concerned, the same is misconceived. As per the settled proposition of law, FIR cannot be quashed only for the reason that the same involves commercial transaction and/or probably can be a cause of action for civil remedy as well. Reliance can be placed upon law laid down by Apex Court in '**Pratibha Rani vs. Suraj Kumar', 1985(1) RCR (Criminal) 539** 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."

10. So far as the allegations levelled in the FIR are concerned, this Court does not find that the FIR is bereft even of the basic facts to constitute the offence(s). The allegation against the petitioners is that they had intent to cheat the petitioners right from the inception and in order to defeat the claim of the petitioners it was informed to the petitioners vide communication dated 10th of December, 2018 that the material supplied by the complaint was not up to the mark. Letter has been placed on record and the same reads as under :

"As you are aware that there are various discrepancies and disputes in our accounts with debit note/quality rejections/ shortages and other differences including quantity discounts etc.

Therefore, we request you to depute someone to our works to reconcile the accounts to clear the differences, if any, and adjust your book accounts accordingly.

If there is no reply, we shall consider our balance to be final and binding."

Further allegation is that the debit notes being relied upon by the petitioners to defeat claim of the complainant are forged documents as thy find no mention even in communication dated 10.12.2018.

11. Ld. Senior Counsel representing the petitioners does not deny that the debit notes were not referred to in the said communication but were produced for the first time before the NCLT on 17th of August, 2019 and it is on the basis of these documents that 90% value being claimed by the complainant has been denied.

12. Section 463 IPC defines 'forgery' which includes making false document or false electronic record or part of a document or electronic record, with an intent to cause damage or injury to a public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit. Making a false document has been defined under Section 464 IPC. Explanation-I appended thereto explicitly provides that the man's signature of his own name also may amount to forgery. In the present case, self serving debit notes have been relied upon by the accused/petitioners to claim that the materials supplied by respondent No.2/complainant was not upto the mark and thus the petitioners are not required to pay for the same. The allegation against the accused/petitioners are that those debit notes were created by antedating the same with an intent to defraud the complainant.

13. The issue thus hinges upon answer to the question as to whether the petitioners antedated the debit notes with an intent to defraud the complainant or not?

14. Trite it is that while exercising jurisdiction under Section 482 Cr.P.C. the High Court is precluded from holding an inquiry into disputed question of fact and from holding mini trial. The High Court cannot sieve the complaint through the cullender of finest gauzes for testing the ingredi-

ents of the offence alleged. Thus, this Court is of the opinion that the intent of the petitioners being matter of trial, this Court should resist the temptation to foray into the territories which this Court ought not while exercising jurisdiction under Section 482 Cr.P.C.

15. Resultantly, the present petition is dismissed.

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

(PANKAJ JAIN)
JUDGE

September 05, 2023
ashish/Dpr

Whether speaking/reasoned: Yes

Whether reportable: No