

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-46491-2021

Date of Decision: 25.04.2023

Vinod Kumar

... Petitioner

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VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Hemen Aggarwal, Advocate for the petitioner

Mr. Mohit Thakur, AAG Punjab

Sandeep Moudgil, J.

(1) This petition under Section 482 CrPC has been filed by the petitioner seeking a direction to respondents No.1&2 to register FIR against respondents No.3 to 6, who are alleged to have collected huge amount which is unaccountable, from the illiterate villagers in the State of Punjab by playing fraud with them and deprived them of their hard earned money.

(2) The factual matrix of the case is that the petitioner and few other had invested money in M/s Nature Heights Infra Limited. It is estimated that the total amount which has been collected by the respondent company, fraudulently, is to the tune of Rs.1000 to 2000 crores (approximately). As per the legal book issued by the respondent company, Nature Way Mission was established on 16.02.2002 by two families of Abohar belonging to Arora and Nagpal family. It is further claimed in the legal book that Nature Way Company aims to provide wide range of products at the reasonable price. It is further stated that a company by the name of Nature Network Marketing Pvt. Ltd., was incorporated and established 13.02.2001.

(3) In the year 2011, Nature Way Group established another company/subsidiary by the name of Nature Heights Infra Limited (NHI) which was established on 13.01.2011. The legal book of the company introduced the subsidiary to be engaged in real estate business which included customized residential, commercial complexes and agricultural land projects and claimed to have PAN India presence through their strong network. NHI is a real estate company being registered under the Companies Act 1956 and is said to be engaged in the business of sale and purchase of agricultural land and its development as per their schemes floated from time to time. This company is duly incorporated with Deputy Registrar of Companies and is also registered as a Promoter under Punjab Apartments and Property Regulation Act 1995.

(4) Nature-way group formed another sister company by the name of Nature Firms and Real Estate Pvt Ltd. on 13.07.2012. During the process of its functioning, the company started its business as promoter for developing a colony and constructing apartments and in lieu of the same, initiated the process of purchasing land in different areas of the State. The said company started its business with a humble startup by allegedly purchasing around 10 acres approximately, of the land located in the village Sandhwan, Tehsil Kotkapura, District Faridkot for the purpose of setting up a residential colony, and thereby applied and obtained requisite permissions from conversion of land use (CLU) to establish a residential colony, by the name of "Nature Valley".

(5) The respondent company further expanded its another residential project by the name of “Harmony Garden” at Amritsar and established a residential colony in area approximate 10 acres at village Luakra Khurd, Tehsil and District Amritsar. The role of respondent-company Nature Heights Infra Limited was primarily restricted to only marketing operations and not the real estate development. A memorandum of understanding was said to have been arrived at by respondent-company with one M/s Bhullar Developers and Builders, Maqbool Road, Amritsar and accordingly, the respondent-company expressed its intention to set up a residential colony by submitting a letter of intent to the office of Amritsar Development Authority, PUDA. As a part of further to continue expansion of their business, respondent-company restricted its role to only marketing/sale business by entering into memorandum of understanding with the real owners/actual developers of the said land. Similar projects were also said to have been initiated in Sector 113, Mohali for an area of almost 25 acres. Similar memorandum of understanding were entered by the respondent company and accordingly it initiated marketing/sale operations at other places such as Mandi Gobindgarh, “NHI Harmony” at Sri Muktsar Sahib, “SHI Rhythm” at Garhshankar and another project at Garhshankar by “Nature” as prefix and similarly, at Banga and also at Uni Town Talwara and further similar projects were initiated at Anandpur Sahib. While at some places like Anandpur Sahib, Garhshankar and Talwara, the respondent-company claimed to have purchased the land, while at several other projects, restricted itself only to marketing/sale operation through its already

established network by signing a memorandum of understanding with the real owners/actual builders.

(6) In order to collect the funds or requisite financial sources, the company instead of putting its own capital into such projects, floated and opened up new schemes in the open market and started raising funds from the public at large by offering several schemes such as land allotment, rent payment, tour management/ownership and travels, hotel management/ownership.

(7) The respondent company as a part of its *modus operandi* used to enter into agreement for sale with the customer claiming itself to be owner of land and thereby allegedly purported the ownership of small parts of land ranging from 150 sq.yards to 2000 sq.yards in the name of the customer/investor without actually specifying the khasra numbers or delivering actual possession of land to the customer. The said schemes also gave the option to the customer either to retain the said plot or sell it at the end of a period specified therein normally ranging to 4 to 8 years. These schemes further promised annual returns or rents to the customers/investors, on such pieces of agricultural land, but, possession of the plots were never actually given to the real customers/investors, rather the company claimed its possession as a developer of the land and claimed development charges and expenses therein from the customers. As such, the petitioner and other thousands of similarly situated persons invested their hard earned money by entering into such schemes like land allotment in lieu of agreements to sell, rent payment, investing in schemes promising lucrative interest compounded

upto 13% p.a. The petitioner had invested various amounts with the respondent-company and against the investments made by the petitioner, the company executed various documents receipts, agreements etc. in favour of the petitioner. M/s Nature Heights Infra Ltd had executed full payment agreements for sale in favour of the petitioner apart-from issuing them receipts against their payments. It is alleged that the respondent company neither paid the maturity amount allegedly promised on said scheme nor actually developed the land allegedly being sold by the company and further no actual sale deeds have been executed by the company in favour of the petitioners and other similarly situated investors in the respondent-company till date. Moreover, the various investors started making complaints to the police, as many as 20 FIRs have been registered so far against M/s Nature Heights Infra Ltd. all throughout the State of Punjab and a description of the FIRs registered has also been tabulated in para 15 of the petition. There are another 11 FIRs against the company and the same are pending investigation in various police stations across the State of Punjab. Not only this, there are 491 criminal complaints registered and 497 complaints reported in Consumer Courts against the respondent-company.

(8) Learned counsel for the petitioner submits that the petitioner is seeking the transfer of investigations of these FIRs including such future complaints/cases of like nature being entrusted to any independent agency like CBI. The local police is also said to have prepared a cancellation report in some cases and in few cases, even the challan is presented by distorting

the facts, apparently safeguarding the interest of accused persons therein and also sheltering other persons likely to be involved in the present case.

(9) It is further averred that the main accused namely Neeraj Arora Managing Director of the respondent-company has not been arrested by the police even after having been declared as proclaimed offender by more than one court in Punjab as back as in the year 2017. The respondent-accused cheated the petitioner assuring them of returning their money with huge interest, but, even the original investment of the petitioner has not been disbursed.

(10) Further, it is submitted that the members of the association approached the respondent No.2 to register the case against the respondents No.3 to 6, but, when the police did not take any action in the matter, the petitioner made a representation dated 10.03.2018 to the Director General of Police, Punjab to arrest the accused, but, to no avail. It was further mentioned in the said representation to the DGP that several complaints were sent by the association but the police did not take any action. Even the Enforcement Directorate is seized of the matter and has issued provisional/final attachment orders of property and assets worth Rs.22.24 crores of the respondent.

(11) Reliance has been placed on **Disha vs. State of Gujarat (2011) 13 SCC 337** to contend that the Courts can direct CBI to investigate the matter even after the charge-sheet has been filed. Keeping in view right to equality under Article 14 of the Constitution of India and in the light of the reply to the petition filed by Gaurav Yadav IPS, Director General of Police, wherein, he has categorically submitted that in the aforementioned scam as

many as 106 FIRS have been registered against the company and its Directors etc. and that these FIRs have been registered in various districts of Punjab, therefore, it is a fit case for a direction for registration of FIR.

(12) Learned counsel further asserted that in view of the facts enumerated in the petition, it is not a fit case for the petitioner to approach the criminal court to file a petition under the Code of Criminal Procedure for the reason that negotiation and handing over of money was between the petitioner and the officers/officials of the company. Hence, no independent witness could be there. It is held by the Hon'ble Supreme Court time and again that in preliminary evidence, it is must that before summoning, the independent witness is examined to prove the case.

(13) Notice of motion was issued on 07.12.2021 and pursuant thereto, reply has been filed by the official respondents on 18.07.2022.

(14) In the reply dated 15.07.2022, respondents No.1 & 2 have asserted that the office of Director, Bureau of Investigation, Punjab on 03.04.2019, has constituted two SITs to investigate the cases related to M/s Nature Heights Infrastructure Ltd., Abohar headed by IGP/Ferozepur Range, Ferozepur: one related to Ferozepur Range and the other related to districts other than those of Ferozepur Range.

(15) This Court on 28.04.2022 passed the following order:-

“As prayed for by the learned State counsel, she is granted a further period of two weeks to institute reply, on affidavit, to be sworn by respondent No. 2, with clear disclosures therein, with respect to the reasons for lack of

action, upon Annexure P-1, and, also with respect to the action proposed thereons.

Owing to non-taking of completest steps, for causing valid service upon respondents No. 3 to 5, the latters remain unserved.

Therefore, subject to, within a week hereafter, the completest steps being taken, thereafter, notice be issued upon respondents No. 3 to 5, and, be made returnable within three weeks thereafter.

List on 18.7.2022.”

(16) In deference thereto, the Director General of Police, Punjab send a report dated 03.06.2022 stating therein that a total of 106 criminal cases stand registered against respondents No.3 to 6 in the different districts of State of Punjab and out of the aforesaid, 106 criminal cases, 21 cases are under investigation, 72 cases are under trial, untraced reports have been presented to court in 06 cases, whereas cancellation reports have been filed in the competent courts in 05 cases. Two cases were quashed by this Court.

(17) The matter was examined by the Director General of Police, Punjab and as per the report received from DIG/Ferozepur Range, Ferozepur, the main accused Neeraj Arora has been declared a proclaimed offender in a large number of cases. That apart, the DIG, Ferozepur Range, Ferozepur has been directed by the Director, Bureau of Investigation to ensure action on the following points:-

“(i) Efforts to locate and find the whereabouts of main accused Neeraj Arora must continue.

(ii) Attachment of property of accused, who have been declared as P.Os, particularly Neeraj Arora, should be done on priority.

(iii) Neeraj Arora and other accused have been arrested earlier in some cases. The interrogation reports should be perused and other available and actionable information. should be acted upon on priority.

(iv) LOC should be got opened for the accused, if not already done.

(v) Bank Accounts of accused should be ascertained and legal action be taken.

(vi) Some of accused might have got bail after arrest. Legal action against sureties be taken.”

(18) Thereafter, report dated 09.07.2022 was submitted by the DIG, Ferozepur Range, Ferozepur wherein it has been mentioned that the raids are being conducted to nab the absconding accused persons and all possible efforts are being made to arrest them and action is being taken under Section 174 A of IPC against the POs. Besides, action for attachment of property under Section 83 CrPC is also being taken against the accused persons who have been declared proclaimed offenders. It has been further mentioned that Directorate of Enforcement has already issued provisional attachment for attachment of various properties of accused Neeraj Arora @ Neeraj Thatai.

(19) In the report, it has also been stated that Look Out Circular (LOC) of accused Neeraj Arora alias Neeraj Thatai has been opened by the Bureau of Immigration, Ministry of Home Affairs, Government of India and that sincere and earnest efforts are being made to arrest the accused persons, particularly the main accused in these cases Neeraj Arora alias Neeraj Thatai.

(20) Heard learned counsel for the parties and gone through the case file.

(21) Chapter XII of CrPC comprising Sections 154 to 176 relates to information to the police and their powers to investigate. Section 154 provides, *inter alia* that the officer incharge of police station shall reduce into writing every information relating to the commission of a cognizable offence given to him orally and every such information if given in writing shall be signed by the person giving it and the substance thereof shall be entered in book to be kept by such officer in such form as the State Government may prescribe in this behalf. Section 156 of the Code with which we are primarily concerned in this petition reads as under:

"(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned."

(22) On completion of investigation undertaken under section 156(1), the officer in-charge of the Police Station is required under Section 173(2) to forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government containing all the particulars mentioned therein. Chapter XIV of the Code lays down the conditions requisite for initiation of proceedings by the Magistrate. Under sub- section (1) of Section 190, any Magistrate of the

first class and any Magistrate of the second class specially empowered may take cognizance of any Magistrate of the first class and any Magistrate of the second class specially empowered may take cognizance of any offence - (a) upon receiving a complaint of facts which constitutes such offence; (b) upon a police report of such facts; or (c) upon information received from any person other than a police officer, or (d) upon his own knowledge that such offence has been committed. Chapter XV prescribes the procedure the Magistrate has to initially follow if it takes cognizance of an offence on a complaint under section 190(1)(a).

(23) From a combined reading of the above provisions, it is abundantly clear that when a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance upon the same under Section 190(1)(a) of the Code and proceed with the same in accordance with the provisions of Chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate Police Station under Section 156(3) for investigation. Once such a direction is given under sub-section (3) of Section 156, the police is required to investigate into that complaint under sub-section (1) thereof and on completion of investigation to submit a police report in accordance with Section 173(2) on which a Magistrate may take cognizance under Section 190(1)(b) but not under Section 190(1)(a). Since a complaint filed before a Magistrate cannot be police report in view of the definition of complaint referred to earlier and since Section 156(1) has to culminate in a police report the complaint - as soon as an order under Section 156 (3) is

passed thereon - transforms itself to a report given in writing within the meaning of Section 154 of the Code, which is known as the First information Report (FIR). As under Section 156 (1) the police can only investigate a cognizable case it has to formally register a case on that report.

(24) While exercising powers under Section 482, this Court cannot interfere with the manner of investigation of a case or direct the investigating agency to investigate from a particular angle or to arrest the accused: The same was observed by the Apex Court in **“M.C. Abraham and Another vs State of Maharashtra and Others” (2003) 2 SCC 649**, wherein it has further gone to the extent of saying that investigating agency is the master of investigation and is at liberty to proceed in its desired direction being free from any interference. The Apex Court in the case of **“Sakiri Vasu vs State of Uttar Pradesh and others” (2008) 2 SCC 409**; has held as under:-

“If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154 (3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156 (3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?”

(25) Thus a sequel to the above mentioned, it can well be crystallized that when an aggrieved person approaches the court in a petition under

Section 482 Cr.P.C., then the court is possessed with enormous powers to do justice or remove injustice. The Court's vast powers are meant to prevent any abuse of the process or to secure the ends of justice. These powers must be exercised for the advancement of justice. Ends of justice are always higher than the ends of mere law and for accomplishing that noble goal the courts have rightly been vested with adequate powers. While saying so at the same time it has to be kept in mind that though the powers possessed by the High Court are extremely wide but the very plentitude of the power requires the courts to function with greater caution and circumspection in the exercise of those powers. In other words, the power under Section 482 Cr.P.C., is to be exercised, *ex debito justitiae*, i.e. to do real and substantial justice.

(26) Further the Apex Court in **"P. Chidambaram v Directorate of Enforcement" 2019 (4) R.C.R. (Criminal) 875** observed the following:-

*"63. Investigation into crimes is the prerogative of the police and excepting in rare cases, the judiciary should keep out all the areas of investigation. In **"State of Bihar and another v. P.P. Sharma, IAS" and another 1992 Supp. (1) 222**, it was held that "The investigating officer is an arm of the law and plays a pivotal role in the dispensation of criminal justice and maintenance of law and order.Enough power is therefore given to the police officer in the area of investigating process and granting them the court latitude to exercise its discretionary power to make a successful investigation...". In **"Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria" (1998) 1 SCC 52**, this Court held that ".....it is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to*

decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order fully insulating a person from arrest would make his interrogation a mere ritual.”

64. As held by the Supreme Court in a catena of judgments that there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused.

65. It is one thing to say that if the power of investigation has been exercised by an investigating officer mala fide or non-compliance of the provisions of the Criminal Procedure Code in the conduct of the investigation, it is open to the court to quash the proceedings where there is a clear case of abuse of power. It is a different matter that the High Court in exercise of its inherent power under Section 482 Cr.P.C., the court can always issue appropriate direction at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide and not in accordance with the provisions of the Criminal Procedure Code. However, as pointed out earlier that power is to be exercised in rare cases where there is a clear abuse of power and non-compliance of the provisions falling under Chapter XII of the Code of Criminal Procedure requiring

the interference of the High Court. In the initial stages of investigation where the court is considering the question of grant of regular bail or pre-arrest bail, it is not for the court to enter into the demarcated function of the investigation and collection of evidence/materials for establishing the offence and interrogation of the accused and the witnesses.”

(27) Considering the afore-said facts and circumstances and also in view of the judgments referred hereinabove, it is not open to this Court to exercise its inherent powers and extra ordinary jurisdiction under Section 482 Cr.P.C., to unsettle the investigating agency at this stage by no stretch of imagination. Since the petitioner has a grievance that his FIR is not being registered by the police station, his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 CrPC.

(28) However, if his grievance still persists, then the petitioner can approach a Magistrate under Section 156 (3) CrPC instead of rushing to the High Court under Section 482 CrPC.

(29) In view of above, the present petition being devoid of any merit, is dismissed with liberty as aforementioned.

25.04.2023
V.Vishal

(Sandeep Moudgil)
Judge

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |