2023:PHHC:122256

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

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CRM-M-54144-2021
Date of decision : 18.08.2023

Vipan Kumar **...... Petitioner**

versus

State of Punjab and another **...... Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ashok Kumar, Advocate for
Ms. Jasneet Mehra, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

Ms. Ramneeq Kaur Jawanda, Advocate for
Ms. Manjari Joshi, Advocate
for respondent No.2.

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PANKAJ JAIN, J. (Oral)

Reply dated 20.08.2022 has been filed on behalf of respondent No.2. The same is taken on record.

2. By way of present petition filed under Section 482 Cr.P.C., prayer is for quashing of FIR No.31 dated 03.02.2020, registered for offences punishable under Sections 406, 420 and 120-B of IPC at Police Station Dhakoli, District SAS Nagar Mohali.

3. As per the contents of the FIR, it has been alleged as under:-

> "IN THE COURT OF SHRI GAVRAV DUTTA, PCS, JUDICIAL MAGISTRATE 1st CLASS, DERA BASSI, CIS No.CRM-114 of 2018 Case No.43 of 2018 Date of Decision: 17.12.2019 UID No. PB0371 CNR No.PBSAB10010402018 State Bank of India, a body corporate constituted under the State Bank of the India

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Act, 1955 (23 of 1955) having its corporate center at Madam Cama Road, Nariman Point, Mumbai and having one of its Local Head office at Sector 17B, Chandigarh and successors to State Bank of Patiala by order dated 22.02.2017 by Central Government under Section 35 of the State Bank of India Act, 1955 and published in the Gazette notification dated 22.02 2017 of Government of India acquiring by way of amalgamation the business including and liabilities of State Bank of Patiala referred to as transferor Bank in the Gazette Notification dated 22.02.2017 doing the business of banking through its various branches in India and abroad and having one such branch at Pear Muchalla, Tehsil Derabassi District S.A.S. Nagar, Punjab through its Branch Manager and Principal officer Shri Sachin Sharma. Complainant Versus 1. M/s Shri Roop Garments, Zirakpur Road, Main Market, Baltana, Tehsil Derabassi. District S.A.S Nagar Through its Prop. Shri Vipan Kumar son of Shri Ramesh Kumar R/o House No.203, GMS Apartment, Peermuchalla, Tehsil Derabassi, District S.A.S. Nagar. 2. Smt. Vipan Kumar son of Shri Ramesh Kumar R/o House No.203, GMS Apartment, Peermuthalla, Tehsil Derabassi, District S.A.S. Nagar Prop. M/s Shri Roop Garments, Zirakpur Road. Main Market, Baltana, Tehsil Derabassi, District S.A.S. Nagar. 3. S.H.O. Police Station Dhakoli. Accused, APPLICATION UNDER SECTION 156 (3) CR.P.C. DIRECTING THE SHO, POLICE STATION, DHAKOLI, ACCUSED NO.3 TO REGISTER THE FIR AGAINST THE ACCUSED NO. 1 & 2 UNDER SECTION 403, 420 AND 120B OF IPC AND FOR INVESTIGATING THE FACTS STATED IN THE APPLICATION. OR TO PASS ANY OTHER ORDER OR DIRECTION

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WHICH THIS HON'BLE COURT MAY DEEMS FIT AND PROPER IN THE PECULIAR FACTS AND CIRCUMSTANCES OF THE CASE. Present: Shri Madhur Bansal, Advocate for complainant. ORDER: 1.The present application was filed under Section 156 (3) Cr.P.C. for registration of FIR against report the accused persons. Status reprot not received. The same is dispensed with. 2. As per the complaint, the complaint company is State Bank of India is a body Corporate and successor to State Bank of Patiala by order dated 22.02.2017 by Central Government under Section 35 of State Bank of India Act. Accused No.1 is a proprietorship concern and Jyoti accused its proprietor. Accused No.1 through accused approached and requested the complainant bank at its branch at State Bank of Patiala, Peer Muchalla now state Bank of India, Peer Muchalla for grant of Credit facilities of Rs. 3,00,000/- as cash credit limit for business of Ready Garments. The complainant bank considered the request of accused No.1 & 2 and granted/advanced a cash credit. limit of Rs.3,00,000/- on 31.07.2015. As per the promissory note dated 31.07.2015, the accused was to deposit the sale proceeds of hypothecated stock of Garments stocks of On usual inspection accused to.1 & 2, of the complainant was astonished that accused have closed its unit/shop and disposed off the entire stock of Garments and accused No.1 & 2 have misappropriated the funds for their own use with a view to defraud the complainant bank. Accused No.1 & 2 have gone against the terms and conditions of the hypothecation agreement. 3. In Authority Lalita Kumari v. Govt, of U.P. (2014) 2 SCC 1, Hon'ble Supreme Court of India had held that registration of FIR is mandatory under Section 154, if the information

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discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. In matrimonial disputes/ family disputes, commercial offences, medical negligence cases, corruption cases, or cases where there is abnormal delay in initiating criminal prosecution; preliminary inquiry even in the such limited case is not to veracity of truth of the matter only to ascertain whether the information reveals any cognizable offence. Proper stage for such verification of the veracity of information received is after registration of FIR. Preliminary inquiry should be time bound and in any case, it should not exceed seven days. The fact of said such delay and causes of it must be reflected in General Diary Entry. 4. The Courts of India are confronted with scenario in which the non-scrupulous loanees come to the bank and take huge amount into their coffers and thereafter flee from Justice. Police either being hand in glove with accused or being naive in such like economic frauds to zilch in the same. In the present case the complainant had alleged that the accused No. 1 is Proprietorship concern, which has accused No.2 as proprietor, came to the complainant bank for the sanction of loan against hypothecation of goods. The money to the tune of 3,00,000/- had been sanctioned as cash credit limit. However, the accused had not only sold the hypothecated goods but had diverted the funds of loan amount for their own use. Even the amount of sale proceeds of the hypothecated goods had been used by the accused No.1 & 2. If it would have been only the case moving of hypothecated goods or their unauthorised sale it may have not given rise to registration of FIR. In the present case, it is the scenario where public funds have been defrauded in

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lakhs and the accused have fled away from the justice under the pretext that they have their matter pending before Debt Recovery Tribunal (DRT). If such like offenders are set at large by police, it would lead the economic anarchy. Present Court is faced with more than 50 cases of such economic crimes with same economic forensic underpinnings/ "modus operandi" of all the culprits in the same. Police is a meek spectator to all such events. Financial Institutions including the public banks and small banks have stumbled in the recent days and Indian economy had stumbled seminally. Even the criminal justice system would stumble if the courts turn blind eye to such acts of economic crimes. Keeping in view the above said conspectus of facts; FIR under Section 420 of Indian Penal Code is ordered to be registered against the accused No.1 & 2 for having defrauded the complainant State Bank of India of the public money and the cheating shall not be considered only against the bank but to the public at large. Accused persons had disposed of entrusted/hypothecated property in violation of legal contract (express & implied) in terms of section 405 of Indian Penal Code. Thus, offence punishable under Section 406 of Indian Penal Code is also made out against accused. In view of above discussion, FIR against accused No.1 & 2 is ordered to be registered under Section 406 & 420 read with Section 120B of Indian Penal Code. Now to come up on 04.02.2020 for awaiting report regarding registration of FIR against accused. DSP (Mubarikpur) shall keep a Tab over the present investigation in order to keep the Investigating Officer concerned in check. Announced in open Court : 17.12.2019 SD/-(Gaurav Dutta) PCS Judicial Magistrate, 1st Class, Dera

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> Bassi/UIDPB0371. Upon which on the order of the ld. JMIC Derabassi I have entered the same as DDR No.72 dated 31.1.2020. Copy of order Forwarded to SHO Dhakoli For Compliance SD/- Judicial Magistrate 1st Class Dera Bassi."

4. In the reply, the complainant has taken a specific stand to the following effect:-

> "xx xx xx
>
> 3. That it is submitted that the matter was compromised with the petitioner by the respondent No.2/bank and the No Objection Certificate was issued to the petitioner after the payment of the amount of ₹ 3 lakhs as culled out in the document annexed as Annexure P-4 with the criminal miscellaneous petition."

5. In view of above, keeping in view the fact that the offences punishable under Sections 406 and 420 are compoundable with the permission of Court, this Court finds that in view of law laid down by Supreme Court in **State of Madhya Pradesh vs. Laxmi Narayan and others (2019) 5 SCC 688,** there is no impediment in quashing of FIR.

6. Resultantly, the present petition is allowed. FIR No.31 dated 03.02.2020, registered for offences punishable under Sections 406, 420 and 120-B of IPC at Police Station Dhakoli, District SAS Nagar Mohali is quashed in view of the stand taken by the complainant-Bank.

7. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

18.08.2023
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Whether speaking/reasoned : Yes
Whether Reportable : No

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