

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2023:PHHC:163342
CRM-M-2183-2016
Reserved on: December 14, 2023
Date of Decision: December 19, 2023

M/s Air Control and Chemical Engineering
Company Limited and another Petitioners

Versus

State of Punjab and another ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. P.S. Hundal, Sr. Advocate with
Mr. Ankush Chauhan, Advocate for the petitioners.
Mr. Parneet Singh Pandher, AAG, Punjab.
Mr. Rupender Singh Rana, Advocate for respondent No.2.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioners pray for quashing of criminal complaint No.30945 of 2013 titled as *“S.K. Saini v. M/s Air Control and Chemical Engineering Company Limited and others”*, under Sections 420, 463, 464, 465, 468, 471/34 of IPC (Annexure P-2), pending in the Court of learned Judicial Magistrate 1st Class, Jalandhar alongwith summoning order dated 11.02.2011 (Annexure P-4); order dated 19.11.2015 (Annexure P-5), declaring the petitioners as absconders and subsequent proceedings.

2. As it emerges on perusal of the paper book that respondent No.2 Shri S.K. Saini, proprietor of M/s Ventech Associates, filed complaint (Annexure P-2) to prosecute the accused (petitioners herein), alleging that order for purchasing 06 water cooled chilling machines of

specified capacity was placed to the accused. An amount of ₹12,29,000/-

was paid in advance. The balance amount was paid through cheques with understanding that cheques will be presented for collection only after the inspection by the complainant (respondent No.2). However, after receiving machines, when these were inspected, the same were not found to be as per specified category. It was alleged that accused had thus cheated the complainant, which had caused damage to the reputation of the complainant. The matter was also reported to the Senior Superintendent of Police, Jalandhar. Inquiry was conducted, but no action was taken.

3. After taking preliminary evidence, learned Judicial Magistrate 1st Class, Jalandhar issued process against accused-petitioners vide order dated 11.2.2011 (Annexure P-4) to face proceedings under Sections 420, 463, 464, 465, 468, 471/34 IPC.

4. It is contended by learned counsel for the petitioners that with the same allegations, as contained in the complaint, civil suit was filed by respondent No.2, seeking damage to the tune of ₹20 lacs along with interest. However, that civil suit bearing CNR No. PBJL02-004089-2011, titled as ***“S.K. Saini v. M/s Air Control & Chemical Engineering Company Limited and another”***, has been dismissed by the Court of learned Civil Judge (Sr. Divn.), Jalandhar on 27.04.2018. Learned counsel has also drawn attention towards the fact that complainant S.K. Saini was reported to have expired as noticed in the order dated 15.12.2016 and thereafter, nobody had come forward to pursue the complaint. Learned counsel further contends that the bare perusal of the complaint would reveal that the entire dispute is civil in nature, which has

been given the criminal colour. It is contended that instead of paying the balance amount, the false complaint has been lodged. Learned counsel for the complainant has also referred about the cheques of the balance amount, which were issued by the complainant, but the same were dishonoured, which had compelled the petitioners to file complaint under Section 138 of the Negotiable Instruments Act, 1881, copy of which is Annexure P-1.

5. Learned counsel appearing on behalf of the LR's of respondent No.2 could not refute any of the aforesaid contentions. He conceded the fact that civil suit on the same set of allegations, as made in the complaint, has already been dismissed by the Civil Court vide judgment dated 27.04.2018, copy of which has been placed on record.

6. Having considered submissions of counsel for the petitioners and in view of the factual position as noticed above, this Court finds that the entire allegations as made in the complaint pertain to the civil dispute, which have been given a criminal colour.

7. It has been held by the Hon'ble Supreme Court in the case of ***Parbatbhai Aahir v. State of Gujarat (2017) 9 SCC 641*** that Section 482 Cr.P.C. is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary

- (i) To prevent an abuse of the process of any Court; or
- (ii) Otherwise to secure the ends of justice.

Same are the powers with the High Court, when it exercises the powers under Article 226 of the Constitution.

8. Further, in *State of Haryana vs. Ch. Bhajan Lal, 1992 AIR 604*, Hon'ble Supreme Court laid down guidelines as to in which cases, quashing of FIR can be allowed. It was held as under:

“8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given 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 guide- in myriad kinds of cases wherein such power should be exercised:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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. In present case, the allegations as made in the complaint Annexure P2, squarely fall in parameter N: (a), (b) & (c) of the ***Bhajan Lal’s*** case, as on the face of it, the allegations in the complaint clearly spell out a dispute of civil nature. Respondent – complainant had already availed the remedy by filing civil suit, which has since been dismissed.

10. As such, criminal complaint No.30945 of 2013, titled as ***“S.K. Saini v. M/s Air Control and Chemical Engineering Company Limited and others”***, under Sections 420, 463, 464, 465, 468, 471/34 of IPC (Annexure P-2), pending in the Court of learned Judicial Magistrate 1st Class, Jalandhar along with summoning order dated 11.02.2011 (Annexure P-4); order dated 19.11.2015 (Annexure P-5), declaring the petitioners as absconders and all subsequent proceedings, are hereby quashed.

Allowed.

December 19, 2023

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(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No