

242 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33702-2018
Decided on : 04.08.2023

Sant Parshad Tuli and another Petitioners

Versus

State of Punjab and another Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sanjeev K. Arora, Advocate
for the petitioners.

Mr. H.S.Sullar, Sr. DAG, Punjab.

Mr. Mandeep Singla, Advocate
for respondent No.2.

Manjari Nehru Kaul, J.(Oral)

1. Instant petition has been filed under Section 482 Cr.PC for quashing of FIR No.50 dated 04.06.2017 under Sections 420, 406, 409, 120-B IPC registered at Police Station Smalsar District Moga (Annexure P-6) and subsequent proceedings arising therefrom qua the petitioners.

2. Learned counsel for the petitioners *inter alia* submits that totally false allegations have been levelled against them of having cheated the complainant-respondent, which fact is loud and clear even from a bare perusal of the allegations levelled in the FIR (Annexure P-6). It has been further submitted that a perusal of the FIR reveals that the petitioners had no role at all to play in the crime in question. It has still further been submitted that initially the petitioners along with other members had formed a 10 member Education Society in the name and style of Guru Hargobind Education Society (Regd.)

(hereinafter referred to as 'Society') in which the petitioners were share-holders to the extent of 10% each.

3. Learned counsel submits that as per the allegations levelled, a loan of Rs.13 lakhs was taken by all the members of the Society, which was followed by another sum of Rs.1.5 crores on the basis of forged papers in the name of the Society for opening a school, however, loan was neither repaid by the Society members to the complainant nor was the loaned money in the sum of Rs.1.59 crores properly utilized by the petitioners. Learned counsel submits that in fact it was the Society, which did not repay the amount to the complainant and thus, the petitioners could not be attributed any overt act much less of cheating as they had no personal liability to repay the amount.

4. While drawing the attention of this Court to the affidavit of Share Transfer i.e. Annexures P-2 and P-3, learned counsel has further submitted that it was a matter of record that the petitioners had resigned from the Society and subsequently transferred all their shares in favour of the complainant in the year 2014, and thereafter the complainant after being inducted as a member had been elected as the President of the Society.

5. While drawing the attention of this Court to the compromise dated 06.05.2017 (Annexure P-7) it has still further been submitted that even otherwise, the matter stood settled between the Society and the complainant and pursuant thereto the complainant had already become share-holder to the extent of 42% as compromise had not fructified. Learned counsel submits that false implication of the petitioners in the present criminal case and that too after three

years from the date of their resignation was nothing but a sheer abuse and misuse of process of law.

6. Per contra, learned State counsel assisted by counsel for the complainant while opposing the prayer and submissions made by counsel opposite has submitted that there are serious allegations against the petitioners of having cheated the complainant to the tune of Rs.1.59 crores in connivance with other members of the Society. It has been further submitted that the complainant had invested Rs.1.59 crores in the School, however, later on, without any notice and just to defraud the complainant, all the accused in connivance with each other removed the complainant from the Executive Committee of the Society and instead constituted a new Executive Committee. Learned counsel submits that no doubt, the petitioners had transferred their shares in favour of the complainant, however, that does not absolve them of the serious criminal charges against them.

7. Heard learned counsel for the parties and perused the relevant material available on record.

8. The inherent powers of this Court under Section 482 Cr.PC should be invoked only if the allegations levelled in the FIR do not even remotely disclose the commission of any offence. Therefore, it is incumbent upon this Court to exercise a great deal of circumspection whenever a prayer for quashing of an FIR is made. It needs to be reiterated that quashing of an FIR should be an exception rather than an ordinary rule as has also been held by Hon'ble Supreme Court in *M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others*, SCC Online SC 315.

9. Adverting to the case in hand, a bare perusal of the FIR does reveal the *prima facie* commission of offences under Sections 420, 406, 409, 120-B IPC. Whether or not the petitioners had any role to play in the commission of the crime cannot be gone into at this stage. No doubt, it has been vehemently argued by learned counsel for the petitioners that they had no role to play in the crime in question as they had resigned from the Society much prior to the registration of FIR in question. However, it needs to be reiterated as has also been held by the Hon'ble Supreme Court in its various pronouncements that while exercising its powers under Section 482 Cr.PC this Court cannot embark upon any inquiry qua the truthfulness or otherwise of the allegations levelled in the FIR. The truthfulness or otherwise of the allegations levelled in the FIR would be tested on the touchstone of cross-examination and the material on record which would be produced during trial.

10. As a sequel to the above, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

04.08.2023

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Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No