IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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2023:PHHC:087994

CRM-M No.53347 of 2019
Date of decision: July 12th, 2023

Anshoo Aggarwal

.....Petitioner

Versus

State of Haryana and another

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. S.S. Mor, Advocate
for the petitioner.

Mr. Aashish Bishnoi, Deputy Advocate General, Haryana.

Mr. R.S. Rai, Senior Advocate
with Mr. Amit Goyal, Advocate
for respondent No.2.

MANJARI NEHRU KAUL, J.

The petitioner has invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure for quashing of FIR No.726 dated 10.10.2018 lodged under Sections 120-B, 406, 420, 467, 471 of the Indian Penal Code, 1860 registered at Police Station Sadar, Gurugram, annexed as (Annexure P-1) and consequential proceedings arising out of the same.

2. Learned counsel appearing for the petitioner submits that the petitioner had joined the complainant-company on 07.04.2008. On account of his consistent good performance, he was not only promoted during his ten years of employment with the complainant-company but also given increments in his salary. Unfortunately on 15.01.2018, the petitioner fell seriously ill and was diagnosed with 'Dissociative Amnesia', as a result of which he lost his memory for

some time. He had to undergo treatment at different hospitals as a result of which he was unable to attend to his work, which fact was also in the knowledge of the senior officials of the complainant-company. On 17.04.2018, when one of the Directors of the complainant-company, Mr. Rajesh Tara, asked the petitioner to send a formal leave application along with all his medical records, the petitioner promptly complied and sent all his medical records. However, at the same time he also informed his employer i.e. the complainant-company, that on account of his critical medical condition, it would not be possible for him to rejoin his work. Thereafter, on medical advice, petitioner tendered his resignation, to the complainant-company, via an email. The said resignation was neither accepted nor any confirmation qua the same was conveyed to him, even though the petitioner repeatedly enquired from the complainant about the status of his resignation letter. In support, learned counsel has drawn the attention of this Court to email dated 02.05.2018 (Annexure P-24). Learned counsel has submitted that to his utter shock and dismay, on 03.05.2018, one of the Directors of the complainant company filed a false complaint with the Haryana Police against the petitioner, which was then converted into the FIR in question dated 10.10.2018, a copy of which has been annexed as Annexure P-1. While drawing the attention of this Court to the allegations levelled in the FIR, learned counsel submits that totally false and fabricated allegations stand levelled therein, against the petitioner, of having fraudulently siphoned off an amount of ₹2.82 crore from the accounts of the complainant-company after conspiring with another employee of the company, Sanjay Moudgil. Learned counsel has argued that the petitioner was only a co-signatory to the cheques, which were also signed by the complainant himself as Managing Director of the company. Learned counsel has still further argued that the allegations levelled against the petitioner of having fabricated and manipulated books of accounts and of having over-valued the stocks by creating false debtor accounts and also making wrong tax payments could not have been possible in view of the fact that the complainant himself was a signatory to the cheques in question. Hence, there was no question at all that the petitioner could have fabricated and forged documents in the form of vouchers, as alleged, to defraud the complainant company. Learned counsel has thus, vehemently argued that the offences alleged are not even *prima facie* made out and there is no material worth the name collected by the investigating agency subsequent to the registration of the FIR in question, which would *prima facie* reflect the involvement of the petitioner in the crime in question. It is submitted that in the absence of any cogent evidence on record, there was no possibility at all of the petitioner being convicted by any Court of law and still further, even if the allegations levelled in the FIR are accepted in their entirety, it would not in any manner constitute any offence against the petitioner.

3. *Per contra*, learned State counsel assisted by learned senior counsel appearing for respondent No.2 has opposed the prayer and submissions made by the counsel opposite by asserting that the petitioner has not approached this Court with clean hands and has rather concealed true and material facts of this case. Hence, on this ground alone, the instant petition deserves to be dismissed.

4. Learned counsel have argued that there are specific allegations levelled against the petitioner of having embezzled a huge sum

of money i.e. ₹2.82 crore along with the co-accused, for which enough documentary evidence had been provided to the investigating agency when the complaint was made on 03.05.2018. The petitioner was heading the accounts department of the complainant-company. There was a team of four persons working under him. The petitioner being head of the accounts department of the complainant-company was one of the authorized signatories for payment by way of cheque or RTGS. It was in this capacity, the petitioner along with one Sanjay Moudgil would intentionally keep amount of each such fraudulent transaction less than ₹10 lakh so that he would then become one of the authorized signatories in terms of the existing practice, internal delegation and board resolution passed by the respondent/complainant-company. While Sanjay Moudgil would prepare general vouchers in respect of tax related payments, the petitioner on the other hand would sign and approve the said vouchers. As part of a criminal conspiracy, both the petitioner as well as Sanjay Moudgil fraudulently transferred ₹2.82 crore on various dates, during the period 2015-16 and 2017-18 from the bank account of the complainant-company into bank accounts of three tax agents namely Bhupender Singh Latwal, Vinit Kumar and Sunil Kumar. In support, learned counsel has referred to Annexure R-2/9. Learned counsel have still further asserted that a thorough investigation was carried out pursuant to the registration of the FIR and there was sufficient documentary evidence collected by the investigating agency, which left no manner of doubt about the active participation of the petitioner in the crime in question. Learned counsel have also submitted that the factum of the embezzled amount having been transferred in the bank account of the petitioner has not been disputed by the petitioner and the petition was completely silent qua the same. Furthermore, learned counsel have asserted that the petitioner's alleged illness is just a defence, which he is trying to create so as to evade prosecution in the FIR in question, as it is a matter of record that the petitioner is running his own chartered accountancy firm in Delhi.

5. I have heard learned counsel and perused the relevant material on record.

6. No doubt, the inherent powers of this Court under Section 482 Cr.P.C. are very extensive and wide, however, while exercising its powers, the Court must also remain conscious to the fact that conferment of such unfettered powers also casts an onerous duty upon the Court. On a perusal of the allegations levelled in the FIR but even the challan which has since been presented by the investigating agency, after considering the material collected during investigation, commission of the offences alleged are *prima facie* made out against the petitioner. The contention of the learned counsel for the petitioner that it could not have been possible for the petitioner to forge and fabricate vouchers and resultantly siphon off an amount of ₹2,91,77,556/- (₹ Two crore ninety one lakh seventy seven thousand five hundred fifty six) as he was merely a co-signatory to the cheques cannot be gone into by this Court in the exercise of its inherent powers under Section 482 Cr.P.C. The truthfulness or otherwise of the case of the prosecution would be tested on the touchstone of cross-examination when the parties lead their evidence.

7. This Court thus is not inclined to invoke its inherent jurisdiction under Section 482 Cr.P.C. to quash the FIR No.726 dated 10.10.2018 lodged under Sections 120-B, 406, 420, 467, 471 of the

Indian Penal Code, 1860 registered at Police Station Sadar, Gurugram and, therefore, the present petition stands dismissed.

8. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

July 12th, 2023 **(MANJARI NEHRU KAUL)**
Puneet **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No