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

CRM-M-4850-2024
Decided on:-08.02.2024

Navneet Suri ....Petitioner..

vs.

State of Punjab and others ....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.Anil Mehta, Advocate,
for the petitioner.

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HARKESH MANUJA J. (Oral)

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of FIR No.84, dated 21.10.2023, under Sections 406 and 420 IPC, Police Station Dhakoli, SAS Nagar. Relevant contents of the FIR are reproduced as under:-

> *"Mr. Navneet Suri and his wife Mrs. Megha Suri were regular customer of my wife's salon which is situated opposite to DWPS school, Dhakoli. They were member of HERBALIFE sector-43, Chandigarh and got us into that club. My Son Priyansh Sahu, after Completing B.Pharma wanted to do MBA from Thapar University and for that he Cleared entrance exam/interview he has taken admission in Thapar but Mr. Navneet Suri was saying that he is working in "Prison department" Sector 14, Panchkula as a Capacity of "DSP-Jail" and having good contacts in IIM Rohtak to get admission in management quota for MBA, we believed on his words and he asked to pay cash amount to concern person of IIM Rohtak, He has taken 5.0 lacs cash from us on 14th may 2022 from our home than again he told to deposit some more amount in their HDFC bank account (details are follows-Acc No.- 50100120963841, HDFC bank sector-15) and we deposited 1.25 lacs on 31" may 2022, 20 thousand also given on 07th June 2022 through Paytm, thus, till 07 June 2022 he has taken total 6.45 Lacs from us. On 04/06/2022. Mr. Navneet Suri again called us to meet at Optical nest, SCO-45, inner market, Sec-9, PKL whose owner was his brother-in-law (Mr. Mohit) and he was demanding more money but we denied his request. After*

passing one month when we enquired the status then he said that process is going on but actually he has not done anything. Finally, we requested him to return our hard-earned money as we had arranged cash through loan from our friends (1.0 lacs from Dr. Prabhat and 1.0 lacs from Mr. Yogesh, 0.50 lacs from Mr. Devinder and remaining we arranged from our accounts) but we had taken so many follow-ups but every time he was giving new dates. After so many requests he gave PDC of 6.25 lacs (Cheque no. 096, amount-rupees 1.25 lakhs and 097-amount rupees 5.0 lakhs) dated 10/07/2022, of HDFC bank, Sec-15, Panchkula and promised to return remaining 20000 rupees by cash but after presenting cheques in the SBI bank, Sec-21, pkl, both Cheques bounced. We intimated him and his wife Mrs. Megha but as usual he was saying that he will revert soon then we decided to send legal notice through our Advocate Mr. Pankaj Chandgothia on 25.07.2022 to his Residence and office too. We received Reply from prison department, Sec- 14, PKL office that Mr. Suri has taken Voluntary retirement on 13.07.2022 and was working as a "Assistant" not "DSP" in prison department but we did not receive any reply from Mr. Navneet Suri. We filed a case against MR. Navneet Suri for cheque bouncing under section 138 of negotiable instrument act in suitable court through our advocate and the processing is undergoing. We also approached to "Prison Department, sector 14 Panchkula" but they said that you have to report in police station as they can't take any action against him as he has taken retirement from department. On 26/08/2022, we again called him and asked for our money but he straight away refused. Dear sir, we are not the only one who got scammed by Mr. Navneet Suri and his family."

2. Learned counsel for the petitioner submits that against the dishonour of cheques arising out of the same alleged transanction, the private respondents have already availed their remedies under the provisions of Negotiable Instruments Act, 1881 (for short, 'NI Act') having filed complaint No. NAC-814-2022 and as such the lodging of present FIR is an abuse of the process of law as no offence is made out.

3. I have heard learned counsel for the petitioner and gone through the paper book. I am unable to find substance in the submissions made on behalf of the petitioner.

4. For the reasons best known to the petitioner, no copy of the complaint filed at the instance of private respondents in terms of Section 138 of the NI Act has been placed on record so as to find out any similarity in the cause set-up in the two separate proceedings. Moreover, the filing of complaint under Section 138 of the NI Act, on account of dishonour of cheque, merely relates a cause arising out of dishonour of cheque and nowhere redresses the grievance of the private respondents as regards the alleged fraud having been played upon them at the instance of petitioner, who projected himself to be working in the capacity of Deputy Superintendent of Jail in Haryana, intentionally induced them to part with money under the assurance of getting their son admitted in IIM, Rohtak so as to deceive them and cause loss to them which prima facie fulfill the ingredients of Section 406 & 420 IPC.

5. Hon'ble Supreme Court in the case of **Sangeetaben Mahendrabhai Patel vs State of Gujarat and another, 2012(2) R.C.R(Criminal) 757** while dealing with the question of double jeopardy in case of complainant already having availed the legal remedy under Section 138 NI Act and subsequently lodging FIR u/s 420/406 IPC for alleged fraud committed upon him, held that it does not come under the ambit of double jeopardy if the material ingredients of both offences are different even though emanating from same transaction. Relevant paragraphs are reproduced as under: -

> *"24. In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of autrefois acquit or Section 300 Criminal Procedure Code or Section 71 Indian Penal Code or Section 26 of General Clauses Act, ingredients of the offences in the earlier case as well as*

in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not identity of the allegations but the identity of the ingredients of the offence. Motive for committing offence cannot be termed as ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge.

27. Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 Negotiable Instruments Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 Indian Penal Code. In the prosecution under Section 138 Negotiable Instruments Act, the mens rea i.e. Fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under Indian Penal Code involved herein, the issue of mens rea may be relevant. The offence punishable under Section 420 Indian Penal Code is a serious one as the sentence of 7 years can be imposed. In the case under Negotiable Instruments Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque. Such a requirement is not there in the offences under Indian Penal Code. In the case under Negotiable Instruments Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under Indian Penal Code. The case under Negotiable Instruments Act can only be initiated by filing a complaint. However, in a case under the Indian Penal Code such a condition is not necessary.

28. There may be some overlapping of facts in both the cases but ingredients of offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions."

6. Equally important, the case set up in the present petition of there being talks of business partnership between the two sides, can at best being a disputed version of defence and thus matter of evidence, shall be gone into if necessary by the Court concerned, upon filing of final investigation report

by the investigating agency. Thus, at this stage, in the given facts and circumstances, no interference is called for in exercise of powers under Section 482 of the Code of Criminal Procedure, 1973.

7. Resultantly, in view of the above, finding no merit in the present petition, the same is dismissed.

08.02.2024 **(HARKESH MANUJA)**
sonika **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No