

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-6811-2024 (O&M)

Decided on 17.07.2024

Arun Kumar		... Petitioner
	VS.	
State of Punjab		... Respondent

CRM-M-7090-2024 (O&M)

Yogesh Kumar Garg		... Petitioners
	VS.	
State of Punjab		... Respondent

CORAM: HON’BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Ms. Ridhi Bansal, Advocate for the petitioner(s)

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J.

- (1). This order shall dispose of the above-cited two criminal misc. petitions, viz. CRM-M-6811-2024 and CRM-M-7090-2024 arising out of the same FIR. For the sake of order, CRM-M-6811-2024 is treated as the lead case.
- (2). The petitioner has approached this Court under Section 482 CrPC seeking quashing of the FIR No.07 dated 19.01.2022 under Sections 420/120-B/506 IPC, registered at Police Station Bariwala, District Sri Muktsar Sahib (Annexure P1) including the order dated 26.10.2023 (Annexure P3) framing charges against the petitioner.
- (3). Learned counsel for the petitioner submits that the allegations levelled by the complainant-Ashok Kumar are that the petitioner along with other co-accused have cheated him of Rs.52,29,000/- on the pretext of having business of constructions of flats inasmuch as the petitioner, being close

relative of the complainant approached the complainant claiming that his brick kiln business was suffering losses and expressing a need for financial assistance. It is urged that both the parties were actively involved in thriving business venture which ultimately succumbed due to covid-19 pandemic leading to cessation of business due to which both the parties shared losses. She asserted that money in dispute was actually an investment made by the complainant rather than financial assistance as claimed.

(4). It is contended by learned counsel for the petitioner that the complainant being closely related to the petitioner proposed an investment proposition in order to channalise these funds into thriving brick kiln business operated by the petitioner which is a civil dispute only involving difference in accounts and the ingredients of cheating and fraud under Section 420 IPC cannot be said to be made out. She further contends that the complainant has initiated two separate complaints under Section 138 of Negotiable Instruments Act, 1881 and being therefore, mere dishonourment of cheque does not by itself amount to an intentional act on the part of the cheque issuer i.e. the petitioner.

(5). Learned State counsel contends that an offence under Section 420 IPC is made out as the cheques were deliberately got dishonoured and the petitioner did not have an intention to pay. He submits that proceedings under Sections 138 of NI Act were independent of an FIR/complaint under Section 420 IPC.

(6). Heard learned counsel for the parties.

(7). The proceedings under section 482 of the criminal procedure code are summary proceedings and this Court in exercise of jurisdiction under section 482 does not exercise the power of appreciating the case of the parties

after leading of evidence. The power exercised by this Court is discretionary in nature. The defence of the accused although may appear to be a possible should not be taken into consideration for exercise of the jurisdiction under section 482 Cr.P.C. by this Court *albeit* this Court in exercise of its inherent powers cannot go into the disputed question of facts.

(8). In the present case, it is specifically averred by the complainant that the petitioner allured and confided to invest in their plan. Even the investigation report (Annexure P2) reveals that Arun Kumar and Yogesh Garg cheated the complainant of Rs.52,29,000/- under the well thought-out conspiracy by giving the complainant share in the business of flats and providing a residential flat. There are sufficient grounds to proceed against the petitioner for committing the offence under section 420, 120-B, 506 IPC.

(9). Also there are disputed questions of fact which are involved in the present case which cannot be adjudicated under the present proceedings under Section 482 CrPC as the same needs to be examined very cautiously and sparingly This Court does not find any valid reason to interfere in the trial proceedings and quash the FIR at this stage.

(10). Dismissed.

17.07.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No