IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-14635-2013
Reserved on: 18.04.2024
Pronounced on: 29.04.2024
***2024: PHHC:* 058233**

RAKESH Y. DUBE

. . . . PETITIONER

Vs.

STATE OF HARYANA AND OTHERS

. . . . RESPONDENTS

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. Akashdeep Singh, Advocates, for the petitioner.

Mr.Randhir Singh, Addl. A.G., Haryana.

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DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.PC is to quash FIR No.219 dated 13.07.2011 registered at Police Station Model Town, Rewari under Sections 420/406 IPC.

2. FIR in question (Annexure P4) was registered on the complaint of Charan Singh son of Sube Singh against Rajinder Kumar Shah, Director, M/s Inmegamall Holidays Private Ltd. The FIR reads as under: -

> "Stated that, Respected S.P. Sir, District Rewari.
>
> Sub:- Request letter regarding initiation of proceedings against Rajinder Kumar Shah-Director, M/s Inmegamall Holidays Private Ltd., r/o 201, Alankar Shopping and Residential Complex Nagri, Niwara point, Plot No.26, Goregaun, East Mumbai-61.
>
> Respected Sir,
>
> Complainant submits as under:- (1) That above said Rajinder Shah is Director of M/s Inmegamall Holidays Private Limited. This company used

to operate in Rewari. Earlier it used to deal in a product by the name of Daily fifty Points. Later on 07.12.2009 an investment scheme by the name of Holiday Rewards was launched. (2) that the complainant Charan Singh and Sunil used to work as agent for the above said company. (3) That whatever money investors used to deposit in company through complainant, the entire money was deposited in the accounts as was told to the complainants by the Director of the above said company Rajinder Kumar Shah. (4) That accordingly complainant deposited approximately Rs.35 crores with the above stated company under various schemes. Out of which approximately 25 crores Rupees were returned to the investors under various schemes. (5) That from may 2010, above stated Rajinder Shah stopped making payments to the investors. On which investors started putting pressure on complainant for the payments. Accordingly, complainant put pressure on Rajinder Shah. Above said Rajinder Shah with an intention not to return the payments of investors,, closed the office of the company at Bunglow No.95-99, Luxmi Niwas Road No.1, near Subhida School, Bori Valli, West Mumbai. Above stated complainant tried hard to locate Rajendra Shah so that payments of investors could be repaid. After locating and putting pressure on Rajinder Shah by the complainant, he gave 11 cheques in the name of Charan singh. Total value of the cheque was Rs.1 crore and all were given for different dates. Regarding rest of the payment above said Rajinder Shah assured the complainant that in future he would send the payment of Rs. one crore every month to him. (6) That both the complainants had no liability to make payment to the investors because they were merely working as agents in good faith. Complainants had no concern with day to day affairs of the company. Due to the pressure mounted by the investors on the complainant, on their family members and also believing the words of Rajinder shah, complainant gave their personal cheques to different investors. The list of same is enclosed. (7) That cheques worth Rs.one crore which were given by the Rajinder Shah were also dishonoured. Even the cheques given by complainant were dishonoured because of non-payment of Rs. one crore per month. In future also complainant would not be in a position to make payments of the cheques. In this way Rajinder shah has committed fraud and cheating with the investors. (8) that due to dishonour of cheques, issued by Rajinder Shah and because of non-payment of money and also keeping in view the interest of the investors, both the complainants tried hard to locate Rajinder

Shah and ultimately were able to locate him in Bangalore on 14.04.2011. Due to pressure mounted by the complainant, Rajinder Shah issued 3 post dated cheques to the tune of Rs. 45 lacs each in the name of complainant Charan Singh and 2 post dated cheques to the tune of Rs.45 lacs each in the name of complainant-Sunil. He also gave the original documents and Power of Attorney (Mukhtiarnama) in the name of Charan Singh with regard to his personal property i.e. in the shape of a shop, situate at Dhan Luxmi Cooperative Society Limited, Mumbai. The value of this property in Mumbai is Rs.1.25 crore. He also told that property was without any dispute. There was no loan outstanding against that property nor any dealing has ever been done with anyone to sell this property. Therefore he stated that after selling this property you can make payments to the investors. In that regard Rajinder Shah gave an affidavit dated 14.04.11 and also an Memorandum of Understanding dated 14.04.2011, stating that he had given it without any pressure, undue influence and in his full senses, under oath and verification to the complainant. In the memorandum, Rajinder shah gave assurance to the complainant that the cheques issued by him in favour of investors were in name of Inmegamall Retail Ltd., Cheques issued on the name of company M/S G-2 Infocom India Pvt. Ltd., will also be cleared on time. That when the complainant tried to sell the above said property to different people, then they came to know that a deal was already been finalized between Rajinder Shah and some builder in respect to this property and approximately Rs.50 lacs were received as token money from that builder. This way Rajinder Shah has committed cheating. (10) Now different investors are threatening to kill the complainants. Their family members are also being threatened due to non-payment of money. They are also troubling them. Complainants are trying their best to get the payment of investors from the company. Complainants have no role in non-payment of company's money to the investors. Rajinder Shah of the above said company has committed cheating and fraud with the investors and complainant. Therefore, it is submitted that the complainant and his family members be provided security and case be registered against Rajinder Kumar Shah and his company. Legal action be taken against them. We shall be highly grateful. Complainant (1) Charan Singh S/O Sube Singh R/O DholiKolana (2) Sunil S/O Ramavtar R/O Dhani Shobha, Tehsil and District Rewari."

3.1. It is contended by the petitioner that he is being falsely implicated in the aforesaid FIR on the basis of disclosure statement of the main accused Rajinder Shah, only for the reason that at one point of time, he (petitioner) was a Director of the company, despite the fact that he is not named in the FIR. It is Rajinder Kumar Shah, who was the Director of the company M/s Inmegamall Holidays Private Ltd., which was operating in District Rewari and in the said company, complainant- Charan Singh was working as an agent. It is contended further that as per the allegation of the complainant, it is Rajinder Kumar Shah, who betrayed and cheated the complainant and the investors. It is the cheques given by Rajinder Kumar Shah, which were dishonoured and it is the said Rajinder Kumar Shah, who had given power of attorney in favour of the complaint-Charan Singh in respect of property situated in Mumbai.

3.2 Ld. counsel for the petitioner contends further that petitioner had resigned from M/s Inmegamall Holidays Private Ltd. on 01.6.2010, which was duly accepted by Rajinder Kumar Shah and on the same day, he had resigned from M/s Inmegamall Retail India Private Ltd. and J 2 Infocom India Pvt Ltd. Copies of those resignations are Annexure P2 (Colly). Petitioner had received indemnity bond from Rajinder Kumar Shah, so as to indemnify him. The resignation of the petitioner as Director was duly intimated to the Registrar of Companies, Mumbai on 13.08.2010. Ld. Counsel contends further that on 14.04.2011, a Memorandum Of Understanding was arrived between Rajinder Kumar Shah, Director of the Company and complainant- Charan Singh, in which it was mentioned that business was only between complainant-Charan Singh and Rajinder Kumar Shah, for which petitioner was nowhere responsible, as he had already resigned from the Directorship of the Company. Rajinder Kumar Shah had also given an affidavit to that effect. Copy of cheque, affidavit and MOU are Annexure P5 (colly).

3.3. Ld. counsel also contends that on 08.02.2013, Rajinder Kumar Shah had made a statement before the trial Court that petitioner was Ex-Director of the company, who had resigned on 01.06.2010 and that company had never given any kind of amount to him as beneficiary and so, he will not be responsible for company’s legal (Civil or Criminal) liabilities.

3.4 Ld. counsel contends further that petitioner cannot be held vicariously liable for any action, conduct or day-to-day affairs of the company.

With these submissions, petitioner prays for quashing of the FIR qua him.

4.1 In reply filed by Shri Tahir Hussain, HPS, Deputy Superintendent of Police, (City) Rewari, District Rewari, on behalf of respondents No.1 & 2, it is submitted that name of the petitioner has figured in the disclosure statement of prime accused-Rajinder Kumar Shah, who was arrested on 11.09.2011 and in the said disclosure statement, it was revealed that petitioner was Chairman of M/s Inmegamall Retail India Private Ltd.. Article of association of the company dated 10.01.2008 also showed him on Board of Director of the company. Though he had resigned from the Directorship of the company on 01.06.2010, on account of the losses suffered by the company, but the prime accused along with the present petitioner were running this limited company and were receiving 47.5% each profits as earned by the company.

4.2 It is also urged by ld. State counsel that petitioner remained Managing Director of the Company till 01.06.2010 and as he sensed that trouble had started brewing, he in connivance with the other accused tendered resignation and siphoned the money of the innocent investors, inasmuch as, the occurrence has been in continuance since December 2009.

4.3 Ld. State counsel further argued that FIR is not supposed to be an encyclopedia and simply because name of the petitioner has not figured in the same, cannot be the reason so as to quash the FIR qua him, particularly when his name has suffered in the investigation to be one of the culprits.

4.4 Still further, it is contended by Ld. State Counsel that pre-arrest bail of the petitioner has already been dismissed by a Coordinate Bench of this Court in terms of order dated 06.03.2012 passed in CRM-M-380-2012. Not only this, petitioner has been declared proclaimed offender vide order dated 26.02.2013 passed by ld. ACJM, Rewari and that in all these circumstances, petitioner is not entitled to invoke extraordinary jurisdiction of this Court under Section 482 CrPC by filing this petition.

Prayer is made for dismissal of the petition.

5. I have considered submissions of both the sides and have appraised the record carefully.

6. Section 482 CrPC provides for inherent power to the High Court to make such orders, as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice. However, said power has to be exercised sparingly and with circumspection. Hon'ble Supreme Court, from time to time, has laid down guidelines, as to the facts and circumstances in which complaint or the FIR could be quashed.

7. In ***State Of Bihar vs Murad Ali Khan, Farukh Salauddin, 1989 AIR, 1: 1988 SCR Supl. (3) 455,*** it has been held by Hon'ble Apex Court:

> "It is trite jurisdiction under Section 482 Cr. P.C. which saves the inherent power of the High court, to make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction, the High Court would not embark upon and enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the Trial Magistrate when the evidence comes before him. Through it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence, the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet do not in law constitute or spell-out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not."

8. In ***State of Haryana and others Vs. Ch. Bhajan Lal and others"*** *1992 AIR 604*, Hon'ble Supreme Court has laid down the guidelines as to the cases, in which High Court can exercise its extraordinary power to quash the FIR under Section 482 Cr.PC. 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 of 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;

VIVEK PAHWA
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I attest to the accuracy and integrity of this document

(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 mala fide 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. It is in the light of aforesaid guidelines that it is required to be seen as to whether the FIR in question in the present case, should be quashed, as is prayed for by ld. counsel for the petitioner.

10. No doubt that name of the petitioner does not figure in the FIR lodged on the complaint of Charan Singh and it is Rajinder Kumar Shah, who has been projected as the main accused. However, the FIR is not an encyclopedia so as to contain all the facts. It is the investigation of the allegations contained in the FIR, which unearths the truth contained in the allegations.

11. As is evident from the reply of the State, after arrest of accused-Rajinder Kumar Shah, during interrogation he suffered disclosure statement nominating the petitioner to be the culprit in the case. Petitioner applied for anticipatory bail before this Court and vide order dated 06.03.2012 (Annexure R1) passed in CRM-M-380-2012, his petition was dismissed by Coordinate Bench of this Court. It is revealed further that petitioner was ultimately declared proclaimed offender by the Court of ld. ACJM, Rewari vide order dated 26.02.2013. Thus, instead of joining the investigation, despite dismissal of his anticipatory bail, petitioner chose to avoid the investigation and then filed present petition seeking quashing of the FIR.

12. As the contents of the FIR would reveal the amount of the investors, being collected by the complainant and another, was being deposited in the account of the company, ever-since December 2009. At that time, petitioner was also the director. Not only this, as per the investigation conducted so far qua the co-accused, it has been found that despite resigning from the company as a Director, petitioner was sharing the profits of the company to the extent of 47.5% along with the co-accused. Thus, it appears *prima facie* that after realizing that trouble had started brewing up in the company, he resigned by siphoning of the huge amount invested by the investors.

13. As far as the contentions of the petitioner to the effect that a Memorandum Of Understanding was arrived between Rajinder Kumar Shah, Director of the Company and complainant- Charan Singh, in which it was mentioned that business was only between complainant-Charan Singh and Rajinder Kumar Shah, for which petitioner was nowhere responsible,

having already resigned from the Directorship of the Company and that Rajinder Kumar Shah had also given an affidavit to that effect, are concerned, these are matter of trial and petitioner can plead the same in his defence.

10. In view of above discussion, this court finds that the present case does not fall under any of the guidelines mentioned in ***Ch. Bhajan Lal and others (Supra).*** Consequently, the petition is hereby dismissed, being devoid of any merits.

Pending application(s), if any, stands disposed of.

(DEEPAK GUPTA)
JUDGE

29.04.2024
Vivek

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