IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-39350-2022
Reserved on : 30.01.2024

Date of Pronouncement : 05.03.2024

Ashok Kumar & anr. ...Petitioners

VERSUS

State of Haryana & anr. ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present : Mr. Sunil Panwar, Advocate for the petitioners.

Mr. Gurmeet Singh, AAG, Haryana

Mr. Arvind Seth, Advocate for respondent No. 2.

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HARKESH MANUJA, J.

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of FIR No. 240, dated 30.7.2021, registered under Sections 170, 34, 384, 419 and 420 IPC at Police Station- Gannaur, Sonepat including all consequent proceedings arising therefrom.

2. Briefly stated, facts of the case are that the abovementioned FIR was registered against the petitioners on the basis of a complaint made by one Ramesh Chand, wherein, it was alleged that petitioners extorted Rs.9 lacs from him. It was also stated in the complaint that Amit Tyagi who was resident of Delhi,

falsely represented himself as Delhi Police Inspector in Economic Offence Wing (in short “EOW”) gave threats of elimination.

2.1 On the contrary, the version of the petitioners is that firm of the petitioners supplied dry fruits material to the firm of the sons (Ajay Bansal and Vijay Bansal) of the complainant as per their orders and the total outstanding amounts towards them was Rs.3,40,70,065/- (Rs.Three Crore Forty Lakh Seventy Thousand Sixty Five). Subsequently, Cheques of different dates (between 15.08.2020 to 15.01.2021) were issued by the sons of complainant - respondent No.2 in favour of M/s. Ideal Flavor Foods Private Limited (firm of the petitioners) on presentation were returned with remarks "insufficient funds". On account of dishonor of three cheques amounting to Rs.12.50 Lakhs, Rs.2.5 Lakhs, and Rs.22 Lakhs, issued by son of the complainant- respondent No.2, namely, Vijay Bansal, M/s Ideal Flavor Foods filed a complaint dated 04.12.2020 under Section 138 of the Negotiable Instruments Act, 1881 (for short ‘the Act’) in the Court of Chief Metropolitan Magistrate, Karkardooma Court, Delhi wherein he was summoned vide order dated 28.01.2021. Similarly, on account of dishonour of other two cheques amounting to Rs.60.30 Lakhs and Rs.10 Lakhs issued by another son of complainant-respondent No.2, namely, Ajay Bansal, M/s Ideal Flavor Foods filed complaint dated 04.12.2020, wherein he was also summoned vide order dated 08.02.2021.

2.2 It is further the case of the petitioners that subsequent to these complaints under the Act and summoning orders issued against the sons of respondent No.2, he with his sons concocted a false story and to wriggle out from their legal liability, filed a false and frivolous complaint dated 17.02.2021 against the petitioners in CM Window. This complaint was referred to Deputy Superintendent of Police, Gannaur, who after recording the statements of petitioners and the complainant (respondent No.2) prepared his report and closed the complaint on 13.03.2021. However, after more than 4 months, respondent No.2 again filed a complaint at Police Station - Gannaur on similar allegations and succeeded in registration of the impugned FIR (P-1) by concealing the earlier complaint and inquiry report of Deputy Superintendent of Police, Gannaur.

2.3 Present petition has been filed for the quashing of FIR on the grounds that the same is apparent counter blast to the complaints filed by the petitioners, under Section 138 of the Act and is an abuse of the process of law.

3. In this regard, learned counsel for the petitioners contended that there had been an inordinate delay in leveling of allegations of impersonation, threatening and extortion as alleged by respondent No.2 and the lodging of FIR. He submits that while the last incident as per FIR/complaint was dated 17.10.2020, whereas the complaint in the CM window was made on 17.02.2021 and the present FIR was registered on 30.07.2021. He further submits that

this complaint including the FIR is merely an afterthought and counterblast to the summoning orders dated 28.01.2021 and 08.02.2021 issued against the sons of the complainant / respondent No.2.

3.1 Learned counsel also submitted that though the FIR is based on the allegations of impersonation, threatening and extortion by petitioner No. 2 as respondent No.2 was made to visit the office of Economic Offence Wing on his threats, however, no evidence has been provided by respondent No.2 to substantiate the same and even in charge sheet there is no material regarding these allegations. He further submitted that the inquiry report by the DSP Gannaur dated 13.03.2021, vide which earlier complaint filed by respondent No.2, in CM window was closed by recording that no offence is made out, was neither disclosed by the respondent No 2 while filing the complaint, nor it was taken into consideration by the police officials while registering this FIR.

3.2 With respect to the forged signatures of Notary Public on the Memorandum of Understanding (in short "MoU") between partners of the firm regarding partnership with petitioner No.2, learned counsel submitted that no report from FSL has been sought to verify his signatures to ensure the genuineness and accordingly, mere certificate from said Notary Public cannot be relied upon. He concluded his argument by submitting that present FIR is liable to be quashed being an abuse of the process of law being registered only with the purpose of pressurizing the petitioners to enter into a compromise with respondent No.2 and his sons.

4. On the other hand, written statement filed on behalf of respondent No.1 was adopted by learned counsel representing respondent No.2. On merits, learned counsel for respondent No.2 and the State submitted that from the bare reading of the FIR, ingredients of the alleged offences were duly made out and therefore, FIR cannot be quashed specifically at this initial stage with challan having been filed after thorough investigation. It was further submitted that petitioners came to the house of complainant - respondent No.2 and threatened him with dire consequences in case of non-payment of the dues towards petitioners' firm.

4.1 It was also submitted on their behalf that MoU dated 01.11.2018 which was relied upon by the petitioners to show that petitioner No.2 was having connection with the firm, was found bogus as per the notary public who attested the same. Learned counsel also relied upon the statement of the concerned notary who stated during investigation that on the date of attestation of MoU, he was not even a notary public besides denying his signature on the MoU and even a complaint was also filed by him before police with respect to this incident.

5. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioners.

6. There are two important points for consideration in the present case. Firstly, liability by the firms belonging to sons of respondent No 2 towards the firm belonging to the petitioners has not been specifically denied. Secondly, first cognizable step by respondent No.2 against petitioners was taken on 17.02.2021, only after summons against his sons were issued vide order dated 28.01.2021 & 08.02.2021 in the proceedings under the Act.

7. Recently, the Hon'ble Supreme Court in **"Mamta Shailesh Chandra v. State of Uttarakhand"**, arising from SLP(Crl.)No(s).7273/2019 decided on 29.01.2024, has held that even if the charge sheet had been filed, the Court could still examine if offences alleged to have been committed were *prima facie* made out or not on the basis of the F.I.R., charge sheet and other documents. Relevant para from this judgment is reproduced here under:-

> *"3. We do not agree with the reasoning of the High Court for dismissing the writ petition of the appellant, having regard to the ratio of the judgment of this Court delivered on 04.07.2011 in the case of Joseph Salvaraj A. v. State of Gujarat & Ors. reported in 2011 (7) SCC 59. That was a case arising from the quashing plea of an F.I.R., where chargesheet was submitted after institution of the petition under section 482 of the Code of Criminal Procedure, 1973. A Coordinate Bench of this Court opined that even if the charge sheet had been filed, the Court could still examine if offences alleged to have been committed were prima facie made out or not on the basis of the F.I.R., chargesheet and other*

> *documents."*

8. In **"Iqbal @ Bala v. State of U.P."**, reported as 2023(8) SCC 734, it has been categorically observed by the Hon'ble Apex Court that High Court while exercising extraordinary jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 to get the FIR or the criminal proceedings quashed especially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreak vengeance, owes a duty to look into the FIR with care and a little more closely as it will not be just enough for the Court to look into the averments made in the FIR/complaint alone and it is obligatory on the part of the Court to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. Relevant para from this judgment is reproduced hereunder:-

> *"10. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under section 482 of the Code of Criminal Procedure, 1973 (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so*

because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under section 482 of the CrPC, 1973 or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

Thus, in view of the abovementioned judgments, submission made by the respondents' counsel that since the chargesheet has been filed in present case, FIR shall not be quashed, does not hold the field. Similarly, in view of **Iqbal's case** (supra), another contention that FIR shall not be quashed as from the facts *prima facie* offences are made out, cannot preclude this Court from examining the attending circumstances of this case. Though, it cannot be denied that as a general rule, this court while exercising its jurisdiction under Section 482 of CrPC, shall not enter into disputed question of facts, however, in view of the two considerations as observed above, it becomes necessary to evaluate the offences alleged by respondent No.2 in FIR No. 240, dated 30.7.2021 in view of the attending circumstances of the present case after taking into consideration the entire material on record.

9. A careful perusal of the FIR reveals that the offences alleged in the FIR regarding impersonation, threatening and extortion ranges from dates 03.07.2020 to 17.10.2020. As per the version of respondent No.2/ complainant, his sons were called in Delhi in EOW headquarter on 03.07.2020 and cheques were taken after threatening them. Further allegations are dated 11.10.2020, when petitioners visited the house of respondent No 2 and threatened him in presence of family members. Last date as per the FIR is 17.10.2020, when petitioners again visited the house of respondent No 2 for which photographs were also presented to police. The first complaint was made by respondent No.2 on 17.02.2021 after almost seven months and the impugned FIR was registered on 30.07.2021,

approximately 1 year after the first incident and 9 months after the last incident and there is no explanation from the respondents regarding such a long delay coupled with no overt act committed by the petitioners on 11.10.2020 or 17.10.2020.

10. The other glaring fact which cannot be ignored is that the first complaint in the present case was made by respondent No.2 only when summoning orders have been issued against his sons under the Act. Summoning order against the son of the respondent No.2 namely Vijay Bansal was issued by Chief Metropolitan Magistrate, Karkardooma in complaint No.143/ 2020 vide order dated 28.01.2021 and summoning order against the another son namely Ajay Bansal was issued in complaint 202/ 2021 vide order dated 08.02.2021. It is only after that respondent No 2 sprang into action and filed a complaint dated 17.2.2021 in the CM window. This complaint was, however, closed by DSP Gannaur, who conducted the inquiry and after recording the statement of concerned persons, it was observed in his report dated 13.03.2021 that this complaint pertains to some financial dealings between the parties and no evidence was produced against the petitioners.

11. Respondent No 2, without disclosing the outcome of this complaint, filed another complaint, on the basis of which impugned FIR No.240 dated 30.07.2021 was registered. It appears that the investigating officer (in short "IO") in this FIR did not bother to inquire from the complainant what prevented him from lodging a complaint

for so long. Equally importantly, respondent No 2 also purposefully avoided bringing it on record. Most importantly, subtraction of allegations levelled in the FIR is that the sons of respondent No.2 were called in the police headquarter by petitioner No.2, having impersonated himself as Police Officer, however, surprisingly, neither any complaint was made to Delhi Police; nor even from the charge-sheet it can be traced out that any request was sent to Delhi Police for sharing any such information for making it part of investigation. Thus, in the absence, the allegation of having called the sons of respondent No.2 to Delhi Police Headquarter was not even *prima facie* made out from the final report.

12. A lot of stress has been put by respondents on the fact that the MoU dated 01.11.2018 which has been relied upon by the petitioners to show that petitioner No 2 has connection with the firm, was found bogus in the investigation and concerned notary in his statement during investigation stated that on the date of attestation of MoU, he was not even a notary public besides denying his signature on the MoU. Firstly, a contract between the partners is a private arrangement and petitioner No 1 or another partner had not denied this agreement rather duly admitted the same. Even otherwise, respondent No 2 cannot have any concern with that or any grievance on that account. Also, a written complaint in this regard has already been filed by the concerned notary public and petitioner No 2 would face necessary consequences in that proceedings.

13. At this stage, submission made by learned counsel for the petitioners also gains significance that no FSL report has been sought in this regard to verify the signature of the notary public and only on the basis of his statement, it is being said that the MoU was forged, while an ordinary citizen visiting the Court premises cannot be expected to know whether a notary has authority to do registration or not. The fact that the investigating team did not make any attempt in this direction, shows that investigation in the present case, has also been conducted with a premeditated mind and cannot be relied upon being biased.

14. In the fact and circumstances of the present case, liability by the sons of respondent No.2 towards petitioners' firm has not been specifically denied and only a lame excuse has been provided that the dry fruits provided to them were of substandard quality. However, even to this effect, there is nothing on record that they repudiated the claim on this account prior to complaint as well. There is no material placed on record by respondent No.2 to substantiate the allegations made in the FIR regarding payment of Rs 9 lakhs or that cheques were taken forcefully, when it is the specific case of the petitioners that the cheques were given under a compromise in the chamber of Advocate engaged by sons of respondent No.2 on account of their outstanding liability. Rather, the dates specified for the cheques are in a series which is generally a case when cheques are given under a compromise for recurring payments.

15. Unexplained delay in lodging the FIR as well as critically positioned timing of the same, coupled with premeditated direction of investigation leave no hesitation in the mind of this court that the complaint/FIR filed by respondent No 2 is vexatious and for extraneous reasons only with the purpose to save his sons from the standing liability towards petitioners. In such circumstance, it is imperative that the judicial system upholds principles of justice, ensuring that the truth prevails and parties are not unjustly implicated. The integrity of the legal process hinges on impartiality and adherence to due process, and it is essential that steps be taken to rectify any deviations from these foundational principles.

16. Therefore, considering the parameters laid down by the Hon'ble Supreme Court in **"State of Haryana and others vs. Ch.Bhajan Lal and others"**, reported as 1991 (1) R.C.R. (Criminal) 383, with the objective to prevent the abuse of the process of the Court and keeping in mind the mandate of **Iqbal's case** (supra) to read between the lines, when FIR is filed to settle personal scores, this Court finds itself duty-bound to invoke its powers Under Section 482 Cr.P.C. to quash the impugned FIR.

17. In view of the discussion made hereinabove, present petition is allowed and FIR No. 240, dated 30.7.2021, under Sections 170, 34, 384, 419 and 420 IPC registered at Police Station, Gannaur, District Sonepat including all the consequent proceedings arising therefrom are hereby quashed.

18. Pending miscellaneous application(s), if any, shall also stand disposed of.

05.03.2024 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned ? Yes/No
Whether Reportable ? Yes/No