

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10814-2019

Date of Decision: February 28, 2024

GURDIP SINGHPetitioner
Versus
STATE OF PUNJAB AND ANR.Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Harinder Deep Singh Bains, Advocate
for the petitioner.
Mr. Siddharth Sandhu, AAG, Punjab.

HARKESH MANUJA, J. (ORAL)

By way of present petition, prayer has been made for quashing of FIR No.0155 dated 05.08.2018 registered under Sections 406 and 420 of IPC at P.S. Kartarpur, District Jalandhar Rural along with all subsequent proceedings arising therefrom.

2. The relevant extract from the aforementioned FIR is reproduced hereunder:-

“Complaint against Gurdip Singh @ Bittu son of Nirmal Singh resident of Village Sahinal, P.S. Ratia, District Fatehabad, Haryana regarding receiving a sum of Rs.5,10,000/- in cash on the pretext of constructing a house and for not returning he same (94164-35964). Sir, it is submitted that I Baldev Singh son of Tara Singh am resident of Sarai Khas, P.S. Maqsudan, District Jalandhar (Rural). That in the year 2015. Our relative Gurdip Singh @ Bittu son of Nirmal Singh resident of Village Sahinal, P.S. Ratia, District Fatehabad, Haryana came to me in village Sarai Khas. He told me that he is to construct his new house and for the said purpose he sought my help. Being a relative, I got arranged payment of Rs.5,00,000/- to Gurdip Singh from my friend Harbhajan Singh resident of Village Fateh Jalala, District Jalandhar for construction of his hosue. Now I need the money and therefore

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I demanded money from Gurdip Singh on a number of occasions after visiting his house and on phone as well, but Gurdip Singh is saying that at present he does not have any money and therefore he cannot give the same. I also asked relative of Gurdip Singh on a number of occasions that Gurdip Singh is not returning my money and requested him to make him understand to return told him that since he did not receive any money in his presence, why he is asking him. That Gurdip Singh by receiving a sum of Rs.5,10,000/- from me on the pretext of constructing his new house and now by not returning my money, he has played a fraud upon me. A sum of Rs.5,10,000/- may kindly be got returned from Gurdip Singh and legal action be taken against him. I shall be highly obliged to you.”

3. Impugning the aforementioned FIR, learned counsel for the petitioner submits that even if the allegations levelled against the petitioner are taken at face value, no offence was made out against him in terms of Sections 406 and 420 of IPC. Learned counsel further submits that the registration of FIR against petitioner with the allegations of non-return of the amount taken by him as loan, amounts to misuse of process of law as the proper remedy available to respondent No.2-complainant was to file a suit for recovery of the same.

4. On the other hand, prayer made herein has been vehemently opposed at the instance of learned State counsel while submitting that on thorough investigation of allegations, chargesheet was filed against the petitioner followed by framing of charges on 06.08.2019 and thus the registration of FIR followed by subsequent proceedings warrant no interference.

5. I have heard learned counsel for the parties and gone through the paper-book. Despite service, no one has chosen to appear on behalf of respondent No.2.

6. A perusal of the contents of FIR shows that, the petitioner borrowed a sum of Rs.5,10,000/- from the complainant-respondent No.2 being his relative and upon demand for its return, the petitioner failed and the FIR in question was got registered against him. On the face of it, the present is a pure dispute of civil nature regarding return of money and there is no averment in the entire FIR as regards any kind of dishonest inducement on the part of petitioner to the complainant. Further, the mens rea which is one of the essential ingredients of cheating is neither present, nor it can be found that the amount given as loan by respondent No.2-complainant was received by the petitioner through an act of deception. Even if the allegations are treated to be correct, in the given facts, the proper remedy for respondent No.2-complainant was to file a suit for recovery and the continuation of proceedings in pursuance to the FIR and the final report would tantamount to abuse of process of law.

7. In view of the discussions made hereinabove, the present petition is allowed and FIR No. No.0155 dated 05.08.2018 registered under Sections 406 and 420 of IPC at P.S. Kartarpur, District Jalandhar Rural as well as proceedings subsequent thereto are hereby quashed.

28.02.2024
Tejwinder

(HARKESH MANUJA)
JUDGE

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

