**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-13758-2024
Date of decision: 15th October, 2024

Mandeep Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. S.S. Momi, Advocate for the petitioner.
Mr. A.S. Samra, AAG, Punjab.

***

MANISHA BATRA, J (ORAL):-

The instant petition under Section 482 of Code of Criminal Procedure has been filed by the petitioner seeking quashing of FIR No. 39 dated 02.06.2023 registered under Sections 420 and 120-B of IPC, 1860 at Police Station Khanauri, District Sangrur, Punjab and the proceedings having emanated therefrom.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR has been registered against the petitioner on the basis of statement recorded by respondent No.2-complainant Pawan Kumar on 02.06.2023 alleging therein that he was engaged in the business of sale and purchase of vehicles in truck market, Khannauri. The petitioner who was also running a scrap shop in the same locality, was indulged in scrapping of financed vehicles and further selling the said scrap in connivance with their registered owners. He alleged that during the year 2019 to 2022, the petitioner had purchased new financed

vehicles on cheap rates from actual owners and then sold the same as scrap thereby defrauding the finance companies. He also alleged that the registered owners used to sell vehicles to the petitioner on cheap rates and then in connivance with him used to get FIRs qua theft of such vehicles, registered at different police stations to cause loss to finance companies/banks and even 2-3 months back also, he had purchased a vehicle bearing registration No. RJ-05GB-8788 from its registered owner and had sold some parts of the same in scrap to gain profit and cause loss to the banks/finance company. After registration of FIR, investigation proceedings were initiated. A police party headed by ASI Karnail Singh raided the shop of the petitioner and one truck cabin having registration No. RJ05JB- 8788 written on it, was found lying therein. From the dash board of the said cabin, a bill bearing No. 4354 dated 21.12.2022 was also recovered. A receipt and one dharam kanta slip were found from the dash board of the cabin. The cabin along with the abovesaid slip and bill, were taken into custody. The petitioner was joined into investigation and had been extended benefit of pre-arrest bail. Investigation qua the petitioner has since been completed.

3. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. During the course of investigation, the registered owner of the vehicle No. RJ-05GB-8788 had physically produced the said truck along with copy of insurance policy by appearing before the police. He had also disclosed that he had got financed this vehicle from HDFC bank. Physical verification of the truck had also been conducted. The allegations levelled against the petitioner have been proved to be false. It is

further argued by learned counsel for the petitioner that the respondent No.2-complainant is neither registered owner of the above mentioned vehicle nor he has any other concern with the same. As such, he did not fall within the definition of victim in this case and hence, did not even have any right to lodge FIR against the petitioner. The petitioner is infact a college going student aged 20 years and has no role to play in sale/purchase of hypothecated vehicles. The FIR in this case has been lodged due to personal rivalry between the complainant and father of the petitioner, both of whom are engaged in the business of sale/purchase of vehicles. Even the cousin brother of the complainant has been booked on allegations of cheating and an FIR bearing No. 37 dated 28.05.2023 has been registered against him. The allegations in the FIR, even if, accepted to be correct on the face of the record do not even *prima facie* constitute any case for commission of offence of cheating or hatching any conspiracy against the complainant or any other person. The FIR has been lodged to abuse the process of law and to harass the petitioner. There are no chances of conviction of the petitioner. With these broad submissions, it is argued that the petition deserves to be allowed and the FIR is liable to be quashed.

4. Respondent No.1-State has filed status report, as per which, after registration of FIR and during the course of investigation, one white color truck cabin along with *dharam kanta* slip and bill on which the truck No. RJ-05GB-8788 was written had been recovered from the shop of the petitioner and had been taken into custody along with the cabin. Notice was issued to Yogesh Kumar Gulia, registered owner of the above said vehicle

and a report was also called from Oriental Insurance Company Ltd. i.e. insurer of the said vehicle which revealed that the above said vehicle was duly insured till 25.11.2024. The verification of the truck was done by SI Vinod Kumar and it was revealed that the said vehicle was got financed by its registered owner but he had not paid some of the installments. The registered owner had given in writing that due to damage of the cabin of his truck, he had got it replaced in the local market and did not know as to how it had reached at the place of the petitioner. It is also submitted that the registered owner produced the vehicle on 09.09.2023 before SI Vinod Kumar. Its photograph was also taken. It was a case of the vehicle in question being taken on loan from HDFC Bank by the registered owner and the transaction was of civil nature. An inquiry has also been conduced in the matter and a report has been submitted for filing of the application dated 25.07.2023 as moved by HDFC Bank, Branch Rohtak as against the registered owner Yogesh Kumar Gulia. It is also submitted that evidence regarding the existence of the truck has been collected. No conclusion could be reached by the investigating agency so far and that is why, the matter is still under investigation. Learned State counsel has argued that since the case is still at the stage of investigation, therefore, it is urged that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. At the outset, it may be mentioned that it is well settled

proposition of law that an accused certainly can approach High Court under Section 482 Cr.P.C. or under Article 227 of the Constitution of India to have the proceedings quashed against him, when the complaint does not make out any case against him. Hon'ble Supreme Court has laid down broad principles of law relating to exercise of extraordinary power under Article 226 of the Constitution of India to quash the FIR/Challan report in a celebrated judgment cited as ***State of Haryana vs. Bhajan Lal and others : 1991 (1) RCR (Criminal) 383***, wherein it has been held that the power to quash an FIR/chargesheet can be exercised either to prevent abuse of process of Court or otherwise to secure the ends of justice. The following categories of cases have been detailed, wherein such powers can be exercised:

> 1. 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.
>
> 2. 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.
>
> 3. 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.
>
> 4. Where, the allegations in the F.I.R. 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.

5. Where the allegations made in the F.I.R. 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.

6. 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.

7. 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.

7. Reference can further be made to ***Gian Singh Vs. State of Punjab, 2012(10) SCC 303***, wherein it was observed by Hon'ble Supreme Court that power of the High Court in quashing a criminal complaint or an FIR, in exercise of its inherent jurisdiction, is distinct and different from the power given to a criminal Court for compounding the offences under Section 320 of the Code. This inherent power is of wide plenitude with no statutory limitation but it has come in existence in accordance with guidelines en-grafted in such power viz: (i) to secure the ends of justice, (ii) to prevent abuse of process of the Court

8. Reference can also be made to '***Onkar Nath Mishra and others v. State (NCT of Delhi) and another, 2008 (1) RCR (Criminal) 336 and Devendra and others v. State of U.P. and another, 2009 (7) Scale 613***,' wherein it was observed that when the allegations made in the FIR or the evidence collected during investigation, do not satisfy the ingredients of offences, the superior Courts would not encourage harassment of a person in a criminal case for nothing.

9. Keeping in view afore-discussed position of law, it has to be seen, as to whether, the FIR as registered against the petitioner is liable to be quashed or not? The petitioner has been booked for commission of offence punishable under Section 420 read with Section 120-B of IPC for committing of cheating. The offence of cheating is defined under Section 415 of IPC. The essential ingredients of this offence are as follows:-

> *'(i) There should be fraudulent or dishonest inducement of a person by deceiving him:*
>
> *(ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or*
>
> *(b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and*
>
> *(iii) In cases covered by (ii) (b) the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.'*

10. Then the essential ingredients for commission of offence punishable under Section 420 of IPC are:-

'(i) cheating

(ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into valuable security, and the

(iii) mens rea of the accused at the time of making the inducement.'p

11. It is explicit from the above that to constitute an offence under Section 420 of IPC, there should not only be cheating but as a consequence of such cheating, the accused should have dishonestly induced the person deceived to deliver any property to any person, or to make, alter or destroy wholly or in part, a valuable security or anything signed or sealed, which is capable of being converted into valuable security. The allegations as levelled in the FIR against the petitioner are that he in connivance with the registered owner of truck bearing No. RJ-05GB-8788, had purchased cabin of the said truck in scrap on cheap rates with an intention to defraud the Bank with which this vehicle was financed and to cause wrongful loss to the same. Now it is to be seen, as to whether, the ingredients for commission of offence of cheating have been established in view of the allegations levelled in the FIR and as to whether, the allegations as levelled by respondent No.2 in the FIR are sufficient to *prima facie* establish that the petitioner has deceived him and respondent No.2 or any other person was induced by the petitioner with some dishonest intention to deliver any property or valuable security or as a result of such inducement, he had suffered some damage or injury.

12. Even on assuming that the assertions as made in the FIR by the complainant are correct, still keeping in view the ingredients for commission of offence punishable under Section 420 of IPC, I am of the considered opinion that they are not even *prima facie* established as against the petitioner. First of all, the admitted case of the prosecution is that the vehicle bearing registration No. RJ05-GB-8788 was hypothecated with HDFC Bank. No complaint or FIR is stated to have been lodged by the said Bank. The respondent No.2-complainant cannot be stated to be falling within the definition of victim at all since, it is not the allegation that it was he who was tried to be deceived by the petitioner-accused either by making any false or misleading representation or by any other action or omission. Nor it is his case that the petitioner offered to the complainant any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induced him to do or omit to do anything which he would not do or omit, if he were not so deceived. As such, it cannot be stated that by purchasing cabin of vehicle No. RJ05-GB-8788, the petitioner had deceived the complainant. The complainant is a third party in this case. He is neither purchaser nor vendor of the cabin of the above mentioned truck nor the sale of the said cabin to the petitioner has affected him in any manner whatsoever. No doubt, if a person sells a property knowing that it does not belong to him and thereby defrauds the person who purchases the property, the purchaser may complain that the vendor committed fraudulent act of cheating but a third party may not make any such complaint. Even if, the entire case of the prosecution is believed or

expected to be true, still none of the ingredients constituting offence of cheating as defined under Section 415 of IPC and punishable under Section 420 of IPC are made out.

13. Further, the bank with which the vehicle was hypothecated could certainly have lodged a complaint as against the petitioner under Section 420 of IPC, if it was aggrieved on account of sale of cabin of the truck lying hypothecated with it, by the registered owner to the petitioner but no such complaint has been filed by it. The ingredients for commission of offence punishable under Section 420 of IPC are not established at all in the absence of any proof of deception on the part of the petitioner by making any false and misleading representation, dishonest concealment or any other act or omission or inducement of the complainant to deliver any property. It is inbuilt under Section 415 and 420 of IPC that there has to be a dishonest intention from the very beginning which is sine qua known to hold an accused guilty for commission of these offences. However, even on microscopic examination of the allegations in the FIR, no dishonest intention *ab initio* on the part of the petitioner is reflected. It is not a case of the respondent No.2 that the petitioner had tried to deceive him in any manner whatsoever.

14. Further from the mere fact that cabin of the truck bearing registration No. RJ05-GB-8788 was found in the shop of the father of the petitioner and this truck is hypothecated one, it cannot be inferred that the petitioner had entered into any conspiracy with the registered owner of the aforementioned vehicle with intent to cheat the complainant because even in

that circumstance cheating if any, would have been as against the financier-HDFC Bank and not qua the complainant. Even if, it is presumed for the sake of arguments, there is any breach of terms of contract between registered owner and bank that would not give rise to inference of offence of cheating by the petitioner as it is required to be shown that he had any fraudulent or dishonest intention or that it was he who had purchased the cabin from the registered owner. The main ingredient of 'cheating' as defined under Section 415 of IPC, is existence of fradulent or dishonest intention of making initial promise or representation thereof from the very beginning of formation of a contract. However, in this case, there is absence of any allegation from whereof the ingredients of offence of cheating can be found out. On a general conspectus of the ingredients required for offence under cheating for which the petitioner has been booked and is to be prosecuted, it is revealed that the same are not made out even *prima facie*. Even if, charge sheet had been filed, the Court would still have to examine, whether the offence alleged to have been committed by the petitioner is *prima facie* made out or not. The case in hand unfortunately does not fall in the category on which cognizance of offence of cheating can be taken. Insinuations made by respondent No.2, even if, they are considered to be correct, have miserably failed to *prima facie* establish the elements of cheating, and in my opinion, the accusations made against the petitioner under Section 420 IPC must fall flat.

15. It is well settled that the Court while exercising its jurisdiction under Section 482 of Cr.P.C. need not restrict itself only to the stage of the

case but is empowered to take into account overall circumstances leading to initiation/ registration of the case as well as material collected in the course of investigation as observed in ***'Mahmood Ali and others Vs. State of Uttar Pradesh and others, AIR (2023) Supreme Court, 3709'.*** It is also well settled that the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr.P.C.. Section 482 of Cr.P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint.

16. In this context reference can be placed upon ***'V.Y. Jose and another Vs. State of Gujarat and another (2009) 3 SCC 78.*** As a fallout and consequence of above stated legal analysis, it is held that the instant one is a fit case for exercising inherent powers of this Court under Section 482 Cr.P.C. to do real and substantial justice. as continuation of criminal proceedings against the petitioner would certainly be an abuse of process and the criminal proceedings cannot be taken recourse as a weapon of harass. The allegations made in the FIR, even if, considered to be uncontroverted do not disclose commission of offence of cheating and there are bleak chances of conviction of the petitioner. Accordingly, the petition succeeds and is hereby allowed and the FIR No. 39 dated 02.06.2023 registered under Sections 420 and 120-B of IPC, 1860 at Police Station

Khanauri, District Sangrur, Punjab and the proceedings arising out of the same are hereby quashed.

17. It is, however, needless to clarify that observations made in this order are relevant for the purpose of FIR in question only and the consequential proceedings.

[MANISHA BATRA]
JUDGE

15th October, 2024
Parveen Sharma

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No