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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CRM-M-39835-2013 (O & M)
Date of decision: 31.01.2024

HARPAL SINGH AND OTHERS

...PETITIONERS

V/S

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. C.R. Dahiya, Advocate for the petitioners.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. K.L. Saini, Advocate for respondent No.2.

HARPREET SINGH BRAR J. (ORAL)

CRM-32604-2018

The instant application has been filed for impleading The Ayalki Primary Agriculture Cooperative Society Limited, Ayalki, District Fatehabad as respondent No.2 in the above-mentioned main petition.

For the reasons mentioned in the application, same is allowed.

Amended memo of parties is taken on record. Registry is directed to tag the same at appropriate place.

MAIN CASE

1. The petitioners have approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure seeking quashing of the FIR No.448 dated 08.11.2012 registered at Police Station Fatehabad under Sections 420, 406, 409, 120-B as well as subsequent proceedings arising therefrom.

FACTUAL MATRIX

2. The facts, in brief, are that the Managing Committee of the Ayalki Primary Agriculture Co-operative Society Ltd., Fatehabad (in short, the

‘Society’) passed a resolution dated 15.01.2007 to construct a building and a boundary wall of the society with an estimated cost of Rs. 10,74,000/- constituted a sub-committee, where the present petitioners were made its members. The said construction started on 04.11.2008, i.e, after 1.5 years of its approval by the Deputy Registrar Co-operative Societies, Hisar. Due to this lag, additional approval for Rs.8,64,000/- was obtained by the committee on 25.06.2009 citing increase in the cost of construction material. But the said additional amount was still found to be insufficient due to increase in the construction costs, thereby, an approval for an additional amount of Rs.06,02,000/- was sought from the Assistant Registrar Co-operative Societies, Fatehabad qua resolution dated 28.10.2010. Thereupon, the said officer directed the Inspector Co-operative Societies, Fatehabad to inquire in the whole matter qua additional approvals. During this inquiry opinion of three different technical/engineering departments was sought including PWD (B&R) and the estimation given by all of them ranged from 20,00,000/- to 24,62,000/-. As per the finding recorded in the final report dated 16.11.2010 (Annexure P-1), the difference between the cost of construction incurred by the society and the assessment made by the authorities came to Rs.03,86,882/-. Thereafter, two members of the Society filed a complaint before the Managing Director of the Fatehabad Central Co-operative Bank Ltd., Fatehabad against the petitioners alleging misappropriation of funds and they also attached an assessment report prepared by an architect stating that the approximate cost of the construction in question was Rs.12,97,257/-. An enquiry was directed upon the aforesaid complaint which recorded vide report dated 08.03.2011 in its finding that the petitioners had caused a loss of Rs.10-13 Lacs to the Society (Annexure P-2). The same complainants also filed a similar complaint before the Registrar Co-operative Societies, Haryana upon which another inquiry was carried out in

which it was recorded vide report dated 20.07.2012 (Annexure P-3) that the said increase in costs of construction was bona fide. Still aggrieved, the said complainants filed another complaint before the Superintendent of Police, Fatehabad on basis of above-mentioned report dated 08.03.2011, upon which the impugned FIR came to be registered against the petitioners. Further, a separate direction was issued by the Registrar Co-operative Societies, Haryana vide a letter dated 14.08.2013 (Annexure P-5) to the ARCS, Fatehabad to initiate surcharge proceedings against the petitioners.

CONTENTIONS

3. The learned counsel for the petitioners *inter alia* contends that the petitioners have been facing protracted trial for the last 11 years qua an issue in which multiple inquiries by the concerned authorities have already been conducted. Further contended that the impugned FIR has been registered without considering the detailed inquiry reports Annexure P-1 and Annexure P-3 which clearly enunciate that the additional construction cost was well justified in lieu of the increasing price of construction material. It is further contended that even the inquiry report (Annexure P-2) on the basis of which the impugned FIR was registered, itself is in violation of Section 98 of the Haryana Co-operative Societies Act, 1984 and Rules of the Society.

4. *Per contra*, learned counsel for respondent no.2 plainly reiterates the submissions made by him in his reply dated 17.08.2023 that the fact that the prices of the construction material increased during the construction period, is false.

5. Learned state counsel opposes the prayer made by the petitioners and contends that there is sufficient material on record against the petitioners for registration of the above-said impugned FIR.

ANALYSIS & OBSERVATION

6. After giving my thoughtful consideration to the submissions put forth by all sides and on careful perusal of the material on record, this Court is inclined to accept the prayer made by the petitioners. Especially, after perusal of the report dated 20.07.2012 (Annexure P-3) prepared by Anand Saxena, Deputy Registrar (Enquiry Officer), Co-operative Societies, Haryana. The relevant portion of the aforementioned report is reproduced here as follows: -

“The assessment made by B&R authorities that the assessment has been prepared as based on plinth area rate as a rough cost estimate. So, this estimate alone can't be taken as a ground to establish that there is excess expenditure. Due weightage should be given to the fact that the estimate work was prepared in 2007 and the work was completed in 2010. The escalation and construction cost is known to everybody. So, I am inclined to agree with the estimated cost prepared by empanelled Engineer (prepared on almost same date as by capital, B&R Engineer). Because the report by B&R engineer has not taken into account the 15 to 20% rate as one HSR rates at which some construction work is allowed to private contractors. The difference in estimated cost of the item is minor, it found the major difference in cost of main building which is B&R 16.70 lacs, Mr. Bhatia, 20.50 lacs, HSAMB 20.50 lacs. If 20% is added to B&R estimate it comes roughly as one Rs.20.00 lacs. Although the agenda for the payments for construction material were passed with majority by present members in Managing Committee meetings. So, I am of the opinion that the cost of construction that is shown in excess as Rs.386882.00 (based on B&R assessment) is neutralized 15 to 20% margin is added to HSR rates.”

7. It is also pertinent to produce here a paragraph from the reply filed on behalf of respondent no.1 dated 30.01.14 of Vijay Singh, Deputy Superintendent of Police (HQ) Fatehabad, which is as follows: -

“That the contents of para number five of the petition are admitted to be correct to the effect that Sh. Sexena submitted his report on 20.07.2012. However, Sh. Sexena reported that the construction of spot shown in excess as Rs.386,882/- based on B&R assessment is neutralized 15 to 20% margin is added to HSR rates. But he committed the negligence of incurring of the expenditure without departmental approval.”

8. As far as the offence under Section 420 is concerned, it is pertinent to consider the view taken by a two Judge bench of the Hon’ble Supreme Court in **Vesa Holdings P. Ltd. v. State of Kerala (2015) 8 SCC 293**. Speaking through Justice C. Nagappa, it was observed as follows:

“ 9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 I.P.C. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an

error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings.”

9. A two Judge bench of the Hon'ble Supreme Court in **Gulam Mustafa v. State of Karnataka and Another 2023(3) RCR (Criminal) 182**, speaking through Justice Ahsanuddin Amanullah, held as follows:

“27. This Court, in S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 24, held:

"... whereas while exercising power under section 482 Cr.P.C, 1973 the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under CrPC, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This being the position, exercise of power under section 482 CrPC, 1973 should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under section 482 CrPC, 1973 to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred."(emphasis supplied)

28. In State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89, it was decided:

"6. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court.

*It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quandolexaliquidaliquidiconcedit, concederevidetur et id sine quo res ipsaeesse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding*

if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto." (emphasis supplied)

29. *In Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336, at Para 7 thereof, it was held that when the complaint fails to disclose any criminal offence, the proceeding is liable to be quashed under Section 482 of the Code:*

"In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 Code which it has erroneously refused."(emphasis supplied)

30. *The law on the subject was also examined in ParbatbhaiAahir v. State of Gujarat, (2017) 9 SCC 641. In Habib Abdullah Jeelani, (2017) 2 SCC 779, it was opined:*

"inherent power in a matter of quashment of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself. There is no denial of the fact that the power under section 482 CrPC, 1973 is very wide but it needs no special emphasis to state that conferment of

wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court." (emphasis supplied)

31. In Vinod Natesan v. State of Kerala, (2019) 2 SCC 401, this Court took the position outlined hereunder:

"11. ... Even otherwise, as observed hereinabove, we are more than satisfied that there was no criminality on part of the accused and a civil dispute is tried to be converted into a criminal dispute. Thus to continue the criminal proceedings against the accused would be an abuse of the process of law. Therefore, the High Court has rightly exercised the powers under section 482 CrPC, 1973 and has rightly quashed the criminal proceedings. In view of the aforesaid and for the reasons stated above, the present appeal fails and deserves to be dismissed and is accordingly dismissed."

CONCLUSION

10. In conclusion, mere negligence as to not taking a prior approval of the department concerned before incurring the construction costs and a minor irregularity in estimating the costs of construction does not prove sufficient to establish that any of the alleged offences were committed. Most importantly, culpable intention to cheat from the very inception is completely missing in the present case.

11. In view of the above discussion, the present petition is allowed and the impugned FIR No.448 dated 08.11.2012 registered at Police Station Fatehabad under Sections 420, 406, 409, 120-B, stands quashed. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

January 31, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |