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

CRM-M No.21030 of 2023 (O&M)

Date of Reserve: 21.02.2024
Date of Decision: 12.03.2024

KAUSHIK PAL AND ANOTHER
......Petitioner(s)

Vs

STATE OF HARYANA AND ANOTHER
....Respondent(s)

CORAM: ***HON'BLE MR. JUSTICE HARKESH MANUJA***

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Viraj Gandhi, Advocate,
Ms. Rubina Vermani, Advocate and
Ms. Nutan Keswani, Advocate
for the petitioners.

Mr. Gurmeet Singh, AAG, Haryana

Mr. Pankaj Nanhera, Advocate and
Mr. Pradeep Duhan, Advocate
for respondent No. 2.

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HARKESH MANUJA, J. (Oral)

[1]. By way of present petition filed under Section 482 Criminal Procedure Code, 1973 (hereinafter referred to as "Cr.P.C") petitioners pray for quashing of FIR No. 139 dated 28.03.2023 under Sections 406 IPC (Section 420 IPC added later on) registered at Police Station Baldev Nagar, District Ambala (**Annexure P-1**) arising out of Complaint no. 454-PW dated 31.01.2023 filed by Respondent No. 2 and all consequential proceedings thereof.

[2]. Brief facts of the case are that on 09.05.2008 National Highway Authority of India (hereinafter referred to as "NHAI") entered into a Concession Agreement with SOMA Isolux NH-1 Tollway Private Limited (hereinafter referred

to as "SPV") to build and operate a section of NH-1 highway (between Panipat and Jalandhar) (**Annexure P-2**). Following an investment by Roadis Group (petitioners' employer) on 14.09.2016 name of the SPV was changed to Panipat Jalandhar National Tollway Private Limited (hereinafter referred to as "PJNTPL"). During 2019-2021, PJNTPL issued various work orders to M/s MEC DDC (hereinafter referred to as "MEC-DDC"), sole proprietorship firm of Respondent No. 2/Complainant, for operation and maintenance works. Upon non-payment for the aforesaid work orders Respondent No. 2/complainant filed a complaint before Economic Offences Wing, Karnal ("EOW, Karnal") which upon preliminary inquiry concluded that dispute was purely civil in nature and refused to register an FIR. Thereafter, Respondent No. 2/complainant filed a fresh Complaint before Economic Offences Wing, Ambala ("EOW, Ambala") with similar averments that despite completion of work, payment was not being released and present FIR was registered thereupon. Relevant portion from the FIR is reproduced hereunder:-

> *"1. That I am an engineer by profession, and I have a proprietorship firm, whose name is MEC DDC, under which I undertake building and road construction work. In 2020, Defendant No.1 and No.2 Kaushik Pal and Alvaro Santos, E 314 Panipat Jalandhar NH- 1 Tollway Pvt. Ltd. (Soma Roadis), whose office situated in Km 211.805, NH-1, Village Devinagar, PO- Kakru, Ambala City, respectively, they released an order for repair and maintenance work of NH-44, and they were bound to release the payment within 30 days of the completion of the work assigned by them.*
>
> *2. On that basis, all the bills after inspection and verification by the engineers of my company, were submitted by me for the reimbursement of payment. I completed the work by following all the terms and conditions of Defendant and sent the bills for reimbursement of payment to Defendant's company According to the annexed bills, the amount of money due to Defendant is Rs. 38,06,790/-which was due since February 2021.*

> *3. That I have been frequently visiting Defendant's company for receiving the payment of bills since the completion of the work. However, from the beginning, Defendants with malicious intent want to exhort my money. They were evading me for a very long time with the intention to betray.*
>
> *4. That I met them personally and contacted Defendants No.1 and 2 several times over the phone whose recording is also available with me, in which they refused to pay the due amount and they exhibited that they were not intended to pay the money. They said that the company got bankrupt, whereas, both the Defendants still work in the same company and they also threatened me to not meet and contact them again. They betrayed several contractors in the past as well. They badly threatened me and told me that I am instigating other contractors against their company. They told me that if I asked for money from their company, they will kill me and my family, and they threatened to kill me and my family in case I try to contact them again, and as they have political connections, even Police can't do anything in present matter. They have the power to transfer any superior police officer in a matter of seconds.*
>
> *Therefore, I humbly pray that I have been betrayed by both the Defendants and I have been defrauded for Rs.38,06,790/-, due to which my business has collapsed. I and my family are in distress. I humbly request you to recover the said amount of money and arrest them by registering a case against them."*

[3]. Challenging the aforementioned FIR, Learned Senior Counsel representing the petitioners argued that the current case entails a blatant abuse of the legal process, wherein respondent No.2/complainant attempted to cast a criminal hue on a dispute inherently civil. He pointed out that in the case of non-payment for the work orders, a specific remedy in the form of recovery proceedings was available with respondent No.2 and should have pursued the same rather than unduly harassing the petitioners by involving them in the present case.

Learned Senior counsel further asserted that a bare perusal of the FIR showed that the elements necessary for the alleged criminal breach of trust were not established in the present case as the petitioners were never entrusted with any property that they dishonestly misappropriated. He further argued that the accusation of cheating even was not made out, as the petitioners never fraudulently or dishonestly induced respondent no. 2 to deliver any property. He emphasized on the fact that respondent no. 2/complainant also mentioned different amount due towards him in both the complaints i.e EOW, Karnal (Rs.49,50,000/-) and EOW, Ambala (Rs.38,06,790/-) which showed *mala fide* on his part and also that these complaints were mere pressurizing tactics meant to harass petitioners.

[4]. On the other hand, learned Counsel for Respondent no. 2 submitted that Roadis Group (petitioners' employer) and PJNTPL were sister companies and petitioners being CEO/Director of the parent company were deliberately harassing respondent no. 2 by not paying him for the work done by its firm. He further submitted that petitioners were involved with the functioning of PJNTPL as they evidently appeared before Arbitration Tribunal representing as CEO and Director.

[5]. Having heard learned Counsels for both the parties and going through the paper-book, this Court in its humble opinion, find substance in submissions made on behalf of the petitioners

[6]. Upon careful examination of the record it shows that present FIR is primarily an offshoot of an ongoing financial dispute between the parties whereby Respondent no. 2 claimed payment for work done and he blamed the petitioners for deliberate/intentional dereliction in payment of dues pending towards them.

Even if the accusations made in the FIR in question are taken at face value, the contention raised by the learned counsel for Respondent No.2/complainant that petitioners committed an offence punishable under Sections 406 and 420 of IPC does not hold good in facts and circumstances of the present case. In order to fasten criminal liability there has to be a clear cut fraudulent or inducement by the accused at the beginning of transaction. FIR in question no where discloses any averment that respondent No.2-Complainant was ever deceived by the petitioners at the time when agreement was entered between them, having made any false or misleading representation or by any dishonest concealment or an omission, thus ingredient of entrustment and cheating were not made out. Present dispute at best being of breach of contractual obligations is purely of civil nature entailing non-payment of work order dues by PJNTPL against which, respondent no.2/complainant could have availed civil remedy for effecting recovery thereof. Even from the written statement filed on behalf of respondent No.2-complainant before the Court, his primary and substantive grievance has been of non-payment of amount due against work done. Relevant portion from paragraph No.4 of preliminary objections is reproduced hereunder:-

> *"4. xxx xxxx xxx. When complainant asked for his money after completion of projects from the petitioners, firstly they assured that soon you will get money but when complainant asked repeatedly then petitioner no 1 refused to return money and said the company is dead now. Moreover, the complainant also requested petitioners telephonically many times but they flatly refused to return money and also threatened with dire consequences if he demanded money. The complainant is also having call recordings. It is relevant to mention that the petitioners are not disputing the amount due towards complainant."*

[7]. The Hon'ble Supreme Court in the case of ***"Lalit Chaturvedi & others vs State of Uttar Pradesh & another", 2024(2) R.C.R (Criminal) 73***, while dealing with similar issue as in the present case opined that contractual dispute should not lead to initiation of criminal proceedings. Relevant excerpts thereof are reproduced as under: -

> *"6. In **"Mohammed Ibrahim and Others v. State of Bihar and Another" (2009) 8 SCC 751**, this Court had referred to*

Section 420 of the IPC, to observe that in order to constitute an offence under the said section, the following ingredients are to be satisfied : -

> *"18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:*
>
> > *(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;*
> >
> > *(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and*
> >
> > *(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.*
>
> *19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived*
>
> > *(i) to deliver any property to any person, or*
> >
> > *(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security)."*

7. Similar elucidation by this Court in ***"V.Y. Jose and Another v. State of Gujarat and Another" (2009) 3 SCC 78****, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of `cheating', as defined under Section 415of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under section 482 of the Cr.P.C., 1973 section 482 of the Cr.P.C., 1973 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. This Court in V.Y.Jose (supra) placed reliance on several earlier decisions in **"Hira Lal Hari Lal Bhagwati v. CBI" (2003) 5 SCC 257**, **"Indian Oil Corporation v. NEPC India Ltd." (2006) 6 SCC 736**, **"Vir Prakash Sharma v. Anil Kumar Agarwal" (2007) 7 SCC 373** and **"All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain" (2007) 14 SCC 776**."*

[8]. Furthermore, the Hon'ble Supreme Court in case of ***"Prof. R.K Vijaysarathy and another vs Sudha Seetharam and another", 2019 (16) SCC 739***, held that when a matter of civil nature is given a colour of criminal proceedings and bare perusal of complaint reveals that ingredients of criminal offence are not made out then criminal proceedings thereof ought to be quashed. Relevant paragraphs are reproduced as under: -

> *"23. The jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court.*
>
> *24. ……..An attempt has been made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first respondent against the appellants constitutes an abuse of process of court and is liable to be quashed."*

[9]. Without going into the other disputed aspects involved, in view of the discussion made herein above, this petition is allowed and FIR No.139 dated 28.03.2023 under Sections 406 and 420 IPC (added later on) registered at Police Station Baldev Nagar, District Ambala and all consequential proceedings arising

therefrom are hereby quashed purely on the basis of lack of fundamental ingredients of the offences alleged therein.

[10]. Pending miscellaneous application(s) if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

March 12, 2024
Atik

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No